Supreme Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

YELLOW FREIGHT SYSTEM, INC,
Petitioner,

v.

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE AND ITS DIRECTOR AND MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL, AND JOHN L. O'DONNELL,
Respondents.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress in 1991 directed the Interstate Commerce Commission ("ICC") to prescribe new and more simplified standards under which states are permitted to charge fees for registration of interstate motor carrier operations. 49 U.S.C. § 11506(c)(1) It specified that these new standards "shall establish a fee system" that "will result in a fee for each participating State that is equal to the fee *** that such State collected or charged as of November 15, 1991". 49 U.S.C. §11506(c)(2)(B)(iv)(III) In issuing these standards, the ICC specifically ruled that states must apply reduced fee levels based on so-called reciprocity arrangements between states in determining the November 15, 1991 fee level. The D.C. Circuit held on appeal that "the [ICC] was correct in concluding that the plain language of the statute precludes" allowing states to charge fees higher than those in place under reciprocity arrangements.

Under reciprocity arrangements in place on November 15, 1991, Michigan had reduced its registration fee for vehicles plated in Illinois from $10 per vehicle to zero. Expressly disregarding the ICC, a divided Michigan Supreme Court deemed Michigan's reciprocity arrangement with Illinois to be "irrelevant" to the determination of the fee collected or charged on November 15, 1991, and accordingly rejected petitioner's challenge to assessment of a $10 per vehicle fee for Illinois-plated vehicles.

The question presented is whether the Michigan Supreme Court erred in disregarding the ICC's determination and ruling that, notwithstanding 49 U.S.C. §11506(c)(2)-(B)(iv)(III), States may charge registration fees in excess of those charged and collected under reciprocity arrangements in force as of November 15, 1991.

RULE 29.6 STATEMENT

Petitioner Yellow Freight System, Inc. is a wholly owned subsidiary of Yellow Corporation, a publicly held company.

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PETITION FOR A WRIT OF CERTIORARI

Yellow Freight System, Inc. respectfully petitions for a writ of certiorari to review the judgment of the Michigan Supreme Court in this case.

OPINIONS BELOW

The opinion of the Michigan Supreme Court (Pet. App., 2a-22a) in reported at 464 Mich. 21, 627 NW2d 236. The opinion of the Michigan Court of Appeals (Pet. App., 23a-38a) is reported at 231 Mich. App. 194, 585 NW2d 762. The opinion of the Michigan Court of Claims (Pet. App. 39a-42a) is unreported.

JURISDICTION

The order of the Michigan Supreme Court reversing the judgment of the Michigan Court of Appeals was entered May 15, 2001. The opinion of the Michigan Supreme Court was filed on the same date. The jurisdiction of this court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are reproduced in the Appendix. The statutes involved are 49 U.S.C. §11506 (Pet. App. 99a-101a) (since recodified as 49 U.S.C. §14504) and Mich. Comp. Laws § 478.7(4), (2001). (Pet. App. 102a-103a) The Constitutional provision involved is the Commerce Clause, Article I, Section 8, Clause 3.

STATEMENT

Petitioner Yellow Freight System, Inc. is one of the nation's largest interstate trucking companies. It brought this action in Michigan state courts to enforce its federal

constitutional and statutory right to a refund of fees in excess of the maximum amount which Congress has allowed states to charge for the registration of for-hire motor carrier vehicles operating in interstate commerce. Although Congress had been allowing the states to charge such fees up to stated maxima since the 1960's, the fee limitation at issue in this case arises from Congressional efforts in 1991 to streamline state procedures for collecting such fees by establishing a single state registration system ("SSRS"). H.R. Conf. Rep. No. 404, 102 Cong., First Sess. 437 (1991) reprinted in 1991 U.S.C. C.A.N. at 1818 (Pet. App. 97a-98a), resulting in legislation codified at 49 U.S.C. §11506 [1]. (Pet. App. 99a-101a).

One portion of the Congressional enactment was a determination that the level of fees charged by the various states in effect as of November 15, 1991 should be frozen in place for future periods to correlate with other uniformity provisions of the SSRS legislation. Congress stated that charging fees in excess of that amount would constitute a burden on interstate commerce, as prohibited under the Commerce Clause. 49 U.S.C. §11506(c)(2)(C). (Pet. App. 100a) It specifically directed the Interstate Commerce Commission ("ICC") to issue standards to ensure that participating states conformed to this requirement. 49 U.S.C. §11506(c)(1). (Pet. App. 100a).

Petitioner Yellow maintains that the fee system announced by Michigan for complying with the SSRS produces fees

[1] The statute in question originally was enacted in 1991 as 49 U.S.C. §11506 but has since been recodified as 49 USC §14504. The responsibilities originally assigned to the Interstate Commerce Commission("ICC") under the statute have since been reassigned to the Secretary of Transportation and the Federal Motor Carrier Safety Administration, but the language otherwise remains unchanged. This petition will use the initial codified citation, 49 U.S.C. §11506, in referring to this statutory language.

which exceed the November 15, 199' levels. Yellow has been paying these fees under protest since 1993. It filed a timely and continuing action for refund in the Michigan Court of Claims which now involves potential recoveries in excess of $425,000. Nationwide, the issue posed by this decision involves approximately $150 million per year in annual fee increases which states will be allowed to charge to motor carriers if they follow the judgment of the Michigan Supreme Court. (Pet. App. 53a).

The particular fees at issue are the per-vehicle fees that Michigan charges for interstate vehicles commercially plated in Illinois. Yellow's position throughout this matter has been that the fee levels which Michigan was charging for such vehicles on November 15, 1991 must continue to be applied for such vehicles under the SSRS statute. Under a reciprocity arrangement in effect between Michigan and Illinois on November 15, 1991, Michigan had reduced its interstate registration fees for Illinois-plated vehicles from $10 per vehicle to zero. In implementing SSRS, however, Michigan took the position that it was permitted to increase fees for Illinois-plated vehicles to the $10 per vehicle SSRS maximum.

The Michigan Court of Claims and the Michigan Court of Appeals agreed with Yellow's position and ordered Michigan to refund all fees collected for Yellow's Illinois-plated vehicles. *Yellow Freight System, Inc. v. State of Michigan, et al.*, No. 95-015706-CM (March 13, 1996, not reported) ("*Yellow I*") (Pet. App. 39a-42a); *Yellow Freight System, Inc. v. State of Michigan, et al.*, 231 Mich. App. 194, 585 NW2d 762 (1998) ("*Yellow II*") (Pet. App. 23a-38a). A divided Michigan Supreme Court, however, reversed these decisions based on its statement that a fee based on reciprocity agreements could not be treated as a "fee" within the meaning of the SSRS statute for the purpose of fixing future fee levels. *Yellow Freight System, Inc. v. State of*

Michigan, et al., 464 Mich. 21, 627 NW2d 236 (2001) ("*Yellow III*") (Pet. App. 2a-22a) Because the Michigan Supreme Court opinion ignores a specific statutory interpretation to the contrary in the ICC's implementing rulemaking proceeding, is in direct conflict with a decision of the D.C. Circuit affirming the ICC's findings, and inserts a condition into the statute not imposed by Congress, Yellow asks this court to grant certiorari and reverse the Michigan Supreme Court opinion.

A. Underlying Statute

Beginning in 1965, Congress enacted legislation permitting states to require registration of for-hire motor carriers intending to operate in interstate commerce within their borders[2]. Under this legislation, the ICC was directed to maintain standards under which such registration would not constitute an undue burden on interstate commerce in violation of the Commerce Clause. The resulting arrangement required interstate carriers to pay interstate fees in varying amounts to most states in which they conducted interstate operations[3]. For administrative convenience, state regulatory commissions through their national umbrella organization began issuing so-called "bingo cards" on which the carriers could place so-called "bingo stamps" from each of the pertinent states to be carried in their vehicle cabs as proof of payment of these fees.

In 1991, Congress decided to streamline this fee system by converting it to a "single pay" system similar to other multi-state tax and licensing systems applicable to the trucking

[2] Pub. L. No. 89-170, §2, 79 Stat. 648, added September 6, 1965, initially codified as 49 U.S.C. § 202(b)(2), recodified as 49 U.S.C. § 11506 by Pub. L. 95-473, 92 Stat. 1448, added October 17, 1978 (repealed 1991).

[3] Charging of such fees was and remains permissive with each state. Pet. App. 55a-56a.

industry. The overall concept involved channeling all Registration fee payments through a designated base state[4], which then would distribute fees to the other states through a uniform accounting system. In lieu of collecting bingo stamps from multiple states, the motor carriers would receive receipts from their base state which would constitute evidence of registration in other states. State participation in the SSRS was voluntary, but any state wishing to charge fees for registration of interstate vehicles was required to conform to SSRS standards.

The express purpose of Congress was that these changes would be revenue neutral. Under the SSRS statute, Congress stated that the actual fee levels charged by the various states were to remain unchanged and that fee levels were to be frozen in place at the levels being charged as of November 15, 1991. The specific Congressional language concerning fee uniformity stated that SSRS states were required to establish a fee system for registration that

> will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. 49 U.S.C. § 11506(c)(2)(B)(iv)(III) (Pet. App. 101a).

The legislative history similarly stated that

> States will not be allowed to charge a greater fee * * * than the fee they charged under the former program as of November 15, 1991. (Pet. App. 98a).

As the ICC described it, the intent of Congress was

> that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced. (Pet. App. 53a-54a).

[4] As implemented by the ICC regulations, the base state is either the state of the carrier's principal place of business or, for carriers domiciled in a non-participating state, the participating state in which the carrier will operate the largest number of vehicles. Pet. App. 86a.

The entire legislative history of the creation of the SSRS is described in H.R. Conf. Rep. No. 404, 102nd Cong., 1st Sess. 1991 437-438 (1991), *reprinted* in 1991 U.S.C. C.A.N. 1679, 1889, 1991 WL 257494. (Pet. App. 97a-98a).

The details of creating and implementing the single state registration system were not prescribed in the Congressional enactment itself. Congress, rather, specifically delegated that task to the ICC. In 49 U.S.C. §11506(c)(1), Congress stated that the ICC "*shall* prescribe * * * standards" to "implement a system under which (A) a motor carrier is required to register annually with only one State [and] (B) the State of registration shall fully comply with standards prescribed under this section". (Pet. App. 99a) (emphasis added). The ICC was given 18 months to put such standards into effect. *Id.* 49 U.S.C. §11506(a) described those standards as the specification of "procedures required by regulations of the [ICC] to prove the lawfulness of transportation." *Id.* 49 U.S.C. § 11506 (c)(2)(B) stated that such standards "*shall* establish a fee system" that results in the fee levels previously described at 49 U.S.C. §11506(c)(2)(B)(iv)(III). (Pet. App. 100a) (emphasis added).

The legislative history similarly indicates a specific and explicit intention of Congress that the details of implementing and applying the SSRS statute were being delegated to the ICC. The Conference Report stated that the SSRS was "to be instituted by the [ICC], in consultation with the participating states and the trucking industry, in such a manner as to eliminate as much of the paperwork and other compliance burdens as possible." H.R. Conf. Rep. No. 404, *supra*, at 438. (Pet. App. 98a).

B. ICC Implementation

As ordered by Congress, the ICC initiated a rulemaking proceeding to establish regulations and standards for implementing the SSRS system. An initial decision and

advance notice of proposed rulemaking were issued in May, 1992 seeking public participation and comments.[5] Following comments, the ICC issued a second decision in January, 1993 proposing regulations and inviting further comment.[6] A final comprehensive decision was issued in May, 1993 in *Single State Insurance Registration*, 9 ICC 2d 610 (1993) ("*Single State*") (Pet. App. 43a-96a) In this final proceeding, the ICC issued regulations [7] stating how the SSRS was to be applied by states electing to participate and provided further findings as to how these regulations should be interpreted. Both Petitioner Yellow and the Michigan Public Service Commission filed comments at both stages of this proceeding. *Single State Insurance Registration* (*not printed*), *supra at* 1993 WL17833*19; *Single State, supra* at Pet. App. 83a.

One issue raised by commenting parties, and the Commission was the method to be used in determining the per vehicle registration fee which each participating state had collected or charged as of November 15, 1991 within the meaning of the SSRS statute. A particular issue concerned so-called reciprocity agreements between states. Under such agreements, state transportation authorities are legislatively or administratively permitted under state laws to charge less than their base statutory per vehicle registration fees to carriers or vehicles based in other states which afford the same privileges in return. As noted in *Single State*, state interests generally took the position that they should be allowed to ignore the fee levels they actually had been charging under reciprocity agreements as of November 15, 1991, in determining the amount that could be charged under

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[5] *Single State Insurance Registration*, 57 Fed. Reg. 20072 (1992).

[6] *Single State Insurance Registration* (*not printed*),1993 WL17833 (January 22, 1993).

[7] 49 C.F.R. 1023 (Pet. App. 85a-96a), since redesignated as 49 C.F.R. 367.

SSRS. (Pet. App 52a), While initially agreeing with this position from the standpoint of administrative convenience, the ICC eventually concluded that such a method did not comply with either the letter or the spirit of the SSRS statute. (Pet. App. 53a-54a)

The ICC noted that a number of the trucking industry commentors argued that the underlying statute froze fees at the level collected or charged as of November 15, 1991 and that the ICC could not sanction fees higher than those charged or collected. *Id.* It found that if states were to discontinue or disregard their reciprocity agreements, per vehicle fees for many carriers could increase greatly over their November 15, 1991 levels. (Pet. App. 53a) According to the ICC, to have ruled otherwise would have meant that state registration fees could have increased by approximately $150 million per year over their November 15, 1991 levels, a result clearly not intended by Congress. (Pet. App. 53a-54a). The ICC accordingly concluded that states must use fees charged or collected under reciprocity agreements on November 15, 1991 to determine the future fee levels required to be charged under the SSRS statute and the ICC's regulations. (Pet. App. 54a).

State interests challenged this finding in an appeal to the United States Court of Appeals, District of Columbia Circuit. In *National Association of Regulatory Utility Commissioners v. ICC*, 41 F3d 721, 309 U.S. App. D.C. 325 (D.C. Cir. 1994), a D.C. Circuit panel unanimously rejected this challenge. The court found that the ICC ruled correctly that "the plain language of the statute preclude[d] petitioners' interpretation" that lower fees based on reciprocity agreements should not be given effect in determining the November 15, 1991 fee levels required to be continued under the SSRS statute. *Id.* at 729. The panel stated that the statute was clear and unambiguous and that it made no difference whether

Congress actually focused on the reciprocal discount issue or was even aware of it. *Id.*[8]

C. Michigan Litigation

The instant litigation arose because Michigan decided to ignore fees being charged to carriers for operations on November 15, 1991 based on reciprocity arrangements in determining future fees under SSRS. Petitioner Yellow, like many other carriers, had base plated large portions of its interstate operating fleet in Illinois for many years. In 1991 and a number of prior years, Michigan had a reciprocity arrangement in place with Illinois under which vehicles commercially plated in Illinois were not charged registration fees by Michigan and vice-versa. (Pet. App. 5a, 25a-26a) For calendar year 1991, for example, Michigan did not charge vehicle registration fees to any interstate motor carrier for vehicles which were commercially plated in Illinois. (Pet. App. 5a, 25a-26a). It is undisputed that the fee which Michigan was charging as of November 15, 1991 for registering Illinois-plated vehicles to conduct interstate operations in Michigan on that date was zero. (Pet. App. 5a, 25a-26a). Effective February 1, 1992, however, Michigan changed its policy and began assessing a $10 per vehicle fee for Illinois plated vehicles operated by carriers such as

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[8] Following *Single State*, the ICC itself also issued a decision reemphasizing the statutory requirement that reciprocity-based registration fees be continued in effect. In *American Trucking Associations—Petition for Declaratory Order—Single State Insurance Regulation*, 9 ICC 2d 1184 (1993), the ICC answered petitions from a number of states seeking permission to increase fees above the levels established by their November 15, 1991, reciprocity agreements. The ICC rejected these requests, stating that "the language of the statute is clear" and that "Congress mandated a fee freeze; it did not qualify its mandate". *Id.* at 1194. *American Trucking* also held that the statutory freezing of fee levels would not be affected by the fact that a state had announced a prospective fee increase for the following year prior to November 15, 1991. *Id.* at 1195.

Yellow which maintained their principal places of business in states other than Illinois.[9] (Pet. App. 5a).

As result of SSRS and the ICC's implementation actions, Yellow in late 1993 made preparations to submit its initial registration fee payments for the first year of the effectiveness of the SSRS, 1994. It made a specific inquiry with the appropriate state agency, the Michigan Public Service Commission ("MPSC"), to confirm that its vehicles commercially plated in Illinois could be registered for Michigan operations without a fee payment, in the same manner as had been the case for vehicles operating on November 15, 1991. Yellow was told, however, that Michigan insisted on the full $10 per vehicle fee that would have been charged in1992 for Illinois based vehicles operated by carriers headquartered in states other than Illinois. Michigan's position was that it could consider its 1992 fees to that effect as the fees "collected or charged as of November 15, 1991" because it had announced those fees prior to November 15 and had begun collecting those fees from carriers wishing to make advance payments.[10] Yellow accordingly submitted such payments under protest.[11]

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[9] The mechanism of the change implemented by Michigan was that Michigan began affording vehicle fee reciprocity based on the motor carrier's principal place of business rather than on the state in which the motor carrier was commercially plating its vehicles. This change required carriers such as Yellow which plated their vehicles in Illinois but were not headquartered there to pay $10 per vehicle fees for operations in 1992 unless the states of their principal place of business had reciprocity arrangements with Michigan.

[10] This position had been specifically considered and rejected by the ICC in *American Trucking Associations—Petition for Declaratory Order—Single State Insurance Regulation, supra* at 9 ICC 2d 1195, and was not adopted by the Michigan Supreme Court as its basis for sustaining the MPSC's imposition of the $10 per vehicle registration fees.

[11] Under the SSRS structure, Yellow submitted the payments for Michigan to Yellow's base state, Kansas, stating that such payments were

In 1994, following several letters and informal contacts with the MPSC, Yellow filed timely claims with the Michigan Court of Claims seeking refunds of its SSRS payments for the pertinent calendar years. There was no response to these claims and formal litigation commenced in March, 1995. By stipulation Yellow has continued to make annual payments at the $10 level during the pendency of this litigation but such payments will be refunded with interest if Yellow's position in this matter prevails. The current value of the amounts at issue is approximately $425,000, with additional fees accruing in future years.

In proceedings before the Michigan Court of Claims, the parties filed cross-motions for summary disposition. On March 13, 1996, the Court of Claims issued an opinion granting Yellow's motion in part[12] and denying the State's motion. (Pet. App. 42a) As pertinent to this proceeding, the Court of Claims ordered a full refund of all of the registration fees which Yellow had paid to Michigan under protest. *Id.* The parties then filed cross-appeals in the Michigan Court of Appeals. Following briefing and argument, the Court of Appeals issued an opinion affirming the decision of the Court of Claims. (Pet. App. 35a). The State appealed this decision to the Michigan Supreme Court. On May 15, 2001, again after briefing and argument, the Michigan Supreme Court with two dissents issued an opinion holding that Yellow was not entitled to refunds of the challenged SSRS fees. (Pet. App. 11a, 15a, 22a).

The majority opinion of the Michigan Supreme Court was concerned solely with the issue of whether fee levels charged

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under protest. Kansas directed Yellow to seek refunds from Michigan rather than from Kansas.

[12] Yellow's complaint also sought an award of attorney fees under 42 USC § 1988. The Court of Claims and the Court of Appeals did not grant this relief and Yellow did not seek further review on this issue.

by states on November 15, 1991 should be ignored for SSRS purposes if those fee levels were the result of so-called reciprocity arrangements. (Pet. App. 6a). As noted previously, the ICC had considered this issue in the course of its rulemaking proceeding in *Single State* and concluded that there was no basis for excluding fee levels based on reciprocity agreements from the general statutory requirement that fee levels "collected or charged" as of November 15, 1991 be continued. (Pet. App. 53a-54a).

Without any citation to the statutory language, the court majority stated that the fee referred to by the SSRS statute could consist only of what the court described as the "generic fee" of $10.00 per vehicle described in the first sentence of the Michigan registration fee statute, Mich. Comp. Laws § 478.7(4) (2001). (Pet. App. 9a). The court stated that using fees produced by reciprocity agreements authorized by the second sentence of the registration fee statute was a concept "not within the express language of the [SSRS] statute", again, however, without any reference to language in the SSRS statute itself. (Pet. App. 10a-11a). The court further found that the SSRS statute as written was clear and not ambiguous so as to eliminate any requirement of deference to the statutory construction rendered by the ICC in *Single State*. (Pet. App. 9a). Nowhere in the majority opinion did the Michigan Supreme Court cite any language from the SSRS statute or its legislative history which suggested that registration fees collected or charged under reciprocity agreements were to be treated differently than other collected or charged fees in determining the fee level required under SSRS.

The two dissenting justices strongly disagreed with the majority's conclusion that reciprocity agreements are not relevant in determining the fee level required to be charged under the SSRS statute. Justice Kelly reviewed the Michigan fee statute, Mich. Comp. Laws. § 478.7(4) (2001) and concluded that "reciprocity agreements are an inherent part of the state's registration fee system". (Pet. App. 13a). She stated that only a strained reading of the phrase "collected or charged" in the SSRS statute could lead to the conclusion that Michigan was charging the so-called "generic" $10 fee when it in fact was not doing so. (Pet. App. 14a) Justice Cavanaugh stated that the numerous grammatical possibilities for interpretation of the phrase "collected or charged" demonstrated that the SSRS statute was, at very least, ambiguous and offered room for disagreement. (Pet. App. 19a-20a). Both justices stated that the court should defer to the ICC's interpretation of the SSRS statute, citing this court's opinion in *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837; 104 S.Ct. 2778; 81 L.Ed.2d 694 (1984)

REASONS FOR GRANTING THE PETITION

The Petition for Certiorari should be granted to rectify the open and express conflict between the Michigan Supreme Court and the D.C. Circuit in interpreting the impact of reciprocity agreements under the SSRS statute. A clear conflict exists between a state court of last resort and a United States Court of Appeals within the meaning of Sup. Ct. R. 10(b). The opinion of the Michigan Supreme Court majority states specifically that it does not agree with the decision of the D.C. Circuit in *National Association of Regulatory Utility Commissioners v ICC*, *supra* at 41 F3d 721. (Pet. App. 7a). The disagreement between the two courts is clear on its face. The D.C. Circuit stated that "the plain language of the [SSRS] statute precludes" allowing states to charge fees higher than those in place on November 15, 1991 under reciprocity agreements. *Id.* at 729 The Michigan Supreme Court opinion by contrast states that fees based on reciprocity agreements "are not relevant in determining what fee was 'charged or collected' as of November 15, 1991." (Pet. App. 11a).

Action by this court is required to resolve this judicial conflict involving the application of a statute enacted by Congress in its core area of legislative responsibility to regulate interstate commerce.

The statutory interpretation advanced by the Michigan Supreme Court is plainly wrong. With no justification whatsoever, the Michigan Supreme Court has added its own unsupported qualification to simple statutory language from Congress requiring that state registration fees for interstate vehicles be maintained at the same level as existed on November 15, 1991. While the statute bases its continuing fee requirement strictly on "the fee * * * collected or charged as of November 15, 1991", the Michigan Supreme Court states inexplicably that this language (a) does not include fee levels collected or charged based on reciprocity agreements in effect on that date and (b) includes theoretical fee amounts which were *not* being collected or charged on that date as a result of being overridden by reciprocity agreements. As noted by the ICC in interpreting this statute, "Congress mandated a fee freeze; it did not qualify its mandate". *American Trucking Association—Petition for Declaratory Order—Single State Insurance Regulation, supra,* 9 ICC 2d at 1194. The effort of the Michigan Supreme Court to create a judicial exception to the unambiguous requirement of the SSRS statute falls clearly outside the settled jurisprudence of this court regarding statutory interpretation.

Even if there were room for argument concerning the proper interpretation of the statute, the Michigan Supreme Court was required to defer to the ICC's interpretation. Congress specifically and statutorily ordered the ICC to set standards and procedures for applying the SSRS legislation. 49 U.S.C. § 11506(c)(1); 49 U.S.C. § 11506(a). It was silent concerning the impact of reciprocity agreements on the statute. No clearer case could exist for the application of the settled precedents of this court requiring deference to the

statutory and regulatory interpretations of an agency charged with administration of a federal statute. *United States v. Mead Corporation*, __U.S.__ 121 S.Ct. 2164 at 2172,__ L.Ed.2d__ (2001); *Chevron USA, Inc. v. Natural Resources Defense Council, Inc., supra*, 467 US 837. The ICC's interpretation at minimum is clearly reasonable to the degree necessary to require deference to its interpretation in the area of its particular expertise.

These issues involve interpretation of a significant federal regulatory reform statute, impacting the nation's trucking industry and 38 states. Estimates before the ICC indicated that states had the potential of increasing charges to the motor carrier industry by as much as $150 million per year if they were allowed to increase registration fees above the level charged under reciprocity agreements. The Michigan Supreme Court opinion is an open invitation to states seeking additional revenues from interstate carriers to raise fees by disregarding reciprocity agreements, in derogation of the clear intent of Congress to make its 1991 enactment of regulatory simplification revenue neutral. This Court should grant certiorari to resolve the uncertainty in interstate motor carrier transportation created by the Michigan Supreme Court opinion.

I. THE SSRS STATUTE REQUIRES THAT STATE REGISTRATION FEE LEVELS MUST NOT EXCEED FEE LEVELS IN EFFECT ON NOVEMBER 15, 1991, IRRESPECTIVE OF WHETHER SUCH FEE *LEVELS* WERE THE RESULT OF RECIPROCITY AGREEMENTS.

Basic principles of statutory construction require rejection of the interpretation of the SSRS statute advanced by the Michigan Supreme Court. The plain and simple language of the statute negates both the interpretation and the result created by the court's opinion. This interpretation is contrary

to ordinary principles of statutory construction, contrary to legislative history, inconsistent with the underlying factual circumstances, and totally unexplained by the Michigan Supreme Court opinion. The unambiguous construction of the statute is the one advanced by the ICC in *Single State* and *American Trucking,* by the D.C. Circuit in *National Association of Regulatory Utility Commissioners*, and by the Michigan Court of Appeals below (Pet. App. 29a). That interpretation, rather than the arbitrary and conclusory interpretation of the Michigan Supreme Court, should be continued as the governing law regarding this statute.

The statute itself provides simply that the ICC is required to establish standards under which a state participating in the SSRS may only require payment of a registration fee

> that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. 49 U.S.C. § 11506(c)(2)(B)(iv)(III) (Pet. App. 101a).

The ICC, in turn, issued a regulation under its decision in *Single State* which required carriers registering with a state under the SSRS to submit a per vehicle fee

> which fee must equal the fee, not to exceed $10, that such State collected or charged as of November 15, 1991. Former 49 C.F.R. 1023.4(c)(4)(ii) (Pet. App. 89a).

Nothing in the text of either the statute or the regulation suggests that any differentiation is to be made between fees which are fixed by statute enactments and fees which result from reductions authorized by statute based on state agency reciprocity agreements. The requirement simply is that any fee for the future must be equal to "the fee" which the state collected or charged as of November 15, 1991.

Settled rules of statutory construction require the interpretation of the statute reached by the ICC, the D.C. Circuit, and the Michigan Court of Appeals. The statute

imposes a general rule that future state fees for vehicle registration must be equal to the fee which was being "collected or charged" by the state for such registration on November 15, 1991. There is no statutory exception created to this general rule. Exceptions to statutes of general applicability are not to be implied. 2A N. Singer, *Sutherland Statutory Construction* § 47:11 at 249 (6th Ed., 2000). If a legislative purpose is expressed in plain and unambiguous language, the duty of the courts is to give it effect according to its terms. *U.S. v. Rutherford*, 442 U.S. 544, 551, 99 S.Ct. 2470; 61 L.Ed. 2d 68 (1979) If a general rule is presented in a statute and no exception is provided, courts are not empowered to make one. *Burnsed v. State Board of Control*, 189 Cal. App. 3d 213, 217; 234 Cal. Rptr. 316 (1987) The law imposes a strong presumption against implied exceptions to statutes of general applicability. *General Electric Co. v. Department of Environmental Protection*, 429 Mass. 798, 805; 711 N.E.2d 589 (1999)

This lack of statutory ambiguity is supported by the legislative history. Like the statute itself, the legislative history is devoid of any distinction between various methods by which registration fees may have been put into place as of November 15, 1991. The legislative history states merely that

> States will not be allowed to charge a greater fee * * * than the fee they charged under the former program as of November 15, 1991. (Pet. App. 98a)

There is no indication of any intent on the part of Congress that states should be permitted to increase their fees by canceling reciprocity agreements even though they could not increase their fees by altering their statutory fee structure. The legislative history thus supports the general conclusion that no statutory exceptions are present to limit the types of fees which must be continued in effect under the SSRS legislation. Compare, *Sutherland Statutory Interpretation, supra*, at Section 46:04, p. 151.

The construction of the statutory language and legislative history adopted by the ICC, the D.C. Circuit, and the Michigan Court of Appeals is consistent with the underlying factual circumstances surrounding registration fees and reciprocity agreements. The regulatory proceedings before the ICC in *Single State* provide a clear indication of these facts. As described in *Single State*, a number of states had long-standing fee levels established for various categories of carriers based on reciprocal arrangements with a variety of other states. For example, in an example raised by Petitioner Yellow, the state of Nebraska on November 15, 1991 was charging $10 per vehicle to carriers from nine states and was charging $1 per vehicle or less to carriers from 24 states. (Pet. App. 53a). Fees charged by Nebraska would have been at least ten times greater for carriers based in the latter category of states if Nebraska had been allowed to increase its reciprocity based fees to the $10 level. Another commenting party projected a cost increase of $55 per truck over its entire fleet if reduced fees based on reciprocity were eliminated. *Id.* Still another party indicated that allowing states to increase their fees from the reciprocity-based levels to state maximum levels could result in a 400 percent increase in total state fees, from $50 million to $200 million annually. *Id.* Such statements support the concern that ignoring reciprocity-based fees would threaten the desire of Congress for revenue neutrality in the SSRS legislation.

These facts support the statutory interpretation reached by the ICC itself in *Single State* and *American Trucking*, by the D.C. Circuit in affirming *Single State*, and by the Michigan Court of Appeals in rejecting the argument ultimately accepted by the Michigan Supreme Court. All of these statutory interpretations are clear. The ICC's statutory interpretation in *Single State* was as follows:

> We have concluded that our prior proposal regarding this issue did not carry out the letter of the law that fees be frozen as of November 15, 1991, or the intent of the law that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced. As the motor carrier interests point out, were States to discontinue their reciprocity agreements, per vehicle fees for many carriers could increase greatly, and some states would realize windfalls. * * * In brief, we have concluded that participating States must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of November 15, 1991 as required by §11506(c)(2)(B)(iv). (Pet. App. 53a-54a).

The D.C. Circuit in affirming the ICC in *Single State* held as follows:

> [W]e think the Commission was correct in concluding that the plain language of the statute precludes Petitioners' interpretation. It does not matter whether Congress actually focused on the reciprocal discount practice or even was aware of it. Nor is it of any significance that the Commission initially misread the statute; that is what comment periods are for. *National Association of Regulatory Utility Commissioners v ICC*, *supra*, at 41 F3d 733.

The ICC in *American Trucking* held as follows:

> The language of the statute is clear. * * * Congress mandated a fee freeze; it did not qualify its mandate. *American Trucking Associations-Petition for Declaratory Order—Single State Insurance Regulation*, *supra* at 9 ICC 2d 1194.

Finally, the Michigan Court of Appeals in *Yellow II* stated:

> The state also suggests that states should not be required to consider reciprocity agreements in determining the amount of fees "charged or collected as of November 15, 1991." In *Single State Ins. Registration*, 9 ICC 2d 610

(1993), the ICC determined that states must consider the reciprocity agreements. The ICC's decision in this regard was upheld in *National Association of Regulatory Commissioners v ICC*, 309 U.S. App DC 325; 41 F3d 721 (1994). Although that decision is not binding on this court, we find it persuasive and adopt its ruling with regard to this issue. (Pet. App. 29a).

Against this backdrop, the opinion of the Michigan Supreme Court advances virtually nothing in justification of its conclusion that reduced fees based on reciprocity agreements may be ignored in determining future fee levels under SSRS. The court's actual discussion seeking to interpret the SSRS statute embraces less than two pages in the officially reported versions of the opinion. The opinion recognizes that the Michigan registration fee statute contains two sentences, one imposing a fee of $10.00 per vehicle and the second allowing the Michigan Public Service Commission to reduce or waive fees by entering into reciprocity agreements. (Pet. App. 10a). The full text of the Michigan statute reads as follows:

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection. Mich. Comp. Laws. § 478.7(4) (2001) (Pet. App. 102a).

After characterizing the fees under the first sentence as the "generic" fees and fees under the second sentence as "voluntary agreements" the court stated without explanation or citation that

> * * * The clear focus of [the SSRS statute] is on the generic [fee] * * (Pet. App. 10a).

It then stated, again without explanation, that consideration of fees charged or collected by states under reciprocity agreement "added a concept not within the express language of the statute". (Pet. App. 10a-11a). While the court recognized that waiver of the $10 fee under the second sentence of the Michigan statute would result in that fee not being "charged or collected" within the meaning of the SSRS statute (Pet. App. 10a), its opinion suggests that this reduction of fees would not be entitled to consideration because it would affect only "a particular carrier". *Id.* The court stated that it was not for the court or the ICC "to insert words into the statute". (Pet. App. 11a).

Even the most strained attempt to read these two pages to support the Michigan Supreme Court decision fails to breathe logic into the court's ultimate conclusion. The court cites no support for its suggestion that the reciprocity arrangement between Michigan and Illinois in effect on November 15, 1991 benefits only a "particular carrier". (Pet. App. 10a). The reciprocity arrangement applies to any vehicle of any carrier commercially plated in either state. The position adopted by the lower Michigan courts in *Yellow I* and *Yellow II* similarly would hold that registration fees for the future are not chargeable to any vehicle commercially registered in Illinois by any carrier. The court opinion does not point to any argument raised below which would condition the right to a reduced fee on whether or not the carrier in question had been paying for its vehicles at the reduced fee level in 1991.

There similarly is no merit to the suggestion in the opinion that the interpretation of the SSRS statute advanced by Petitioner would be sustainable only if specific language had been added to the statute to reference reciprocity agreements. By the court's own admission, a fee waived by a state under reciprocity agreements is a fee not being "collected or charged". (Pet. App. 10a). No specific language is required to be added to the SSRS statute to make clear that the general

rule requiring continuation of the level of fees collected or charged in 1991 extends to the level of fees "collected or charged" under reciprocity agreements. As noted previously, specific language is required to create an exception, not to demonstrate the absence of one. Compare, 2A *Sutherland Statutory Construction, supra* at § 47:11.

Indeed, as noted in the dissenting opinion of Justice Kelly, the Michigan registration fee statute specifically recognizes that reciprocity agreements "are an inherent part of the state's registration fee system". (Pet. App. 13a) It is highly illogical to conclude that fee reductions based on reciprocity agreements must be excluded from consideration under the SSRS statute when the authority to reduce fees based on such agreement is embedded in the same statutory subsection that contains the base fee itself. Nothing in the Michigan Supreme Court's opinion justifies its arbitrary conclusion that reduced fee levels created by reciprocity agreements are not required to be continued in effect by the SSRS legislation.

II. THE MICHIGAN SUPREME COURT WAS REQUIRED TO DEFER TO THE ICC'S INTERPRETATION OF THE SSRS STATUTE AS IT APPLIES TO RECIPROCITY AGREEMENTS WHERE CONGRESS SPECIFICALLY DELEGATED IMPLEMENTATION OF THE STATUTE TO THE ICC AND WAS SILENT CONCERNING THE IMPACT OF RECIPROCITY AGREEMENTS.

The Michigan Supreme Court opinion at best suggests a possible ambiguity or uncertainty in the language of the SSRS statute as to whether fee levels established by reciprocity agreements are entitled to be given the same consideration as fee levels established by other statutory methods. The considerations mentioned by the Michigan Supreme Court opinion may indicate an underlying policy

argument that requires treating fee levels established by statutorily authorized reciprocity agreements differently than fee levels of fixed statutory amounts. To the extent that such issues create a statutory ambiguity, however, the settled law of this court requires that deference be granted to the resolution of that ambiguity advanced by the ICC in *Single State*.

Congress both specifically and implicitly intended that any gaps or implementing details in the SSRS statute were to be resolved by the ICC. Congress ordered the ICC *by statute* to issue the interpretative standards concerning reciprocity agreements in *Single State* that Michigan seeks to avoid. In 49 U.S.C. § 11506(c)(1), Congress stated that the ICC "*shall* prescribe * * * standards" to "implement a system under which (A) a motor carrier is required to register annually with only one State [and] (B) the State of registration shall fully comply with standards prescribed under this section". (Pet. App. 99a). (emphasis added). 49 U.S.C. § 11506(a) described those standards as the specification of "procedures required by regulations of the [ICC] to prove the lawfulness of transportation." *Id.* 49 U.S.C. § 11506 (c)(2)(B) stated that such standards "*shall* establish a fee system" that results in the fee levels that are the subject of this case. (Pet. App. 100a). (emphasis added). The ICC's actions in issuing the *Single State* decision applying the SSRS statute thus did not constitute agency action which was merely permissive or inferrable from the actions of Congress. The ICC rather was compelled to issue these decisions to comply with the statutory direction from Congress that appropriate and uniform standards "shall" be issued to govern this complex area of interstate commerce.

In these circumstances, the Michigan Supreme Court recognized as have other state courts that it was required to afford the same deference to the determination of a federal administrative agency charged with implementation of a

federal statute as would be required of any federal court. *Yellow III*, (Pet. App. 8a), citing *Totemoff v. State*, 905 P.2d 954, 967 (Alaska, 1995), *Delorme v. North Dakota Dep't of Human Services*, 492 N.W.2d 585, 587, n. 2 (N.D., 1992), *Rodriguez v. Perales*, 86 N.Y.2d 361, 367, 657 N.E.2d 247, 633 N.Y.S.2d 252 (1995), and *Bell Atlantic Mobile, Inc. v. Dep't of Public Utility Control*, 253 Conn. 453, 470, 754 A.2d 128 (2000). The leading case in this area cited by the court was *Chevron USA, Inc. v. Natural Resources Defense Council, Inc., supra*, 467 US 837. Subsequent to issuance of the Michigan Supreme Court opinion, this court has issued its decision in *United States v. Mead Corporation*, *supra* at 121 S.Ct. 2164. While *Mead* provides substantial explanation of the criteria expressed in *Chevron*, the principles of both of these cases remain applicable to the instant proceeding.

Under both *Chevron* and *Mead*, in the case of statutory ambiguity, courts are required to defer to the statutory interpretation advanced by a regulatory agency charged with enforcement of a statue either where Congress has expressly delegated authority to the agency to elucidate a specific provision of the statute by regulation or where it is clear that Congress would have expected the agency to address an ambiguity or fill a space in the enacted law. *Mead, supra*, at 121 S.Ct. 2171, 2172; *Chevron, supra*, 467 U.S. at 843-844, 845. If either of these situations arise, reviewing courts are obliged to accept the agency's position. *Mead, supra*, at 121 S.Ct. 2172; *Chevron, supra*, at 467 U.S. 842-845. The *Chevron-Mead* principle applies only where the agency either has expressed its statutory interpretation in the process of rulemaking or adjudication or where the agency is interpreting its own regulations. *Christensen v. Harris County,* 529 U.S. 576, 587, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000); *Auer v. Robbins*, 519 U.S. 452, 461, 117 S.Ct. 905, 137 L.Ed. 2d 79 (1997).

The ICC's interpretation of the SSRS statute concerning the impact of reciprocity-based fees is entitled to deference under these principles of law. Initially, the *Mead-Chevron* requirements of either express or implied delegation to the agency are satisfied by the text of the SSRS statute. As noted above, the statute expressly ordered the ICC to issue amending regulations to cover issues involved in developing standards for applying the statute. 49 U.S.C. § 11506(c)(1); 49 U.S.C. § 11506(a). The structure of the statute, moreover, makes it clear that details of statutory application were to be prescribed and resolved by the ICC. The legislative history, for example, states specifically that

> This system is to be instituted by the Interstate Commerce Commission in consultation with the participating states and the trucking industry, in such a manner as to eliminate as much of the paperwork and other compliance burdens as possible. (Pet. App. 98a).

The ICC's resolution of the reciprocity-based fee issue during the rulemaking proceeding directed by Congress thus constitutes a precise example of an agency resolution of an issue which Congress would have expected. Indeed, as noted by the D.C. Circuit in describing the ICC's actions

> it does not matter whether Congress actually focused on the reciprocal discount practice or even was aware of it. *National Association of Regulatory Utility Commissioners v. ICC*, *supra*, at 41 F3d 729.

The clear statutory intent of Congress in enacting the SSRS legislation was that the ICC was to be delegated with congressional authority to interpret the underlying statute to address an issue such as reciprocity-based fees.

The Michigan Supreme Court was under a particularly strong obligation to follow the ICC's interpretation because of the express delegation of authority implementing standards and procedures contained in the SSRS statute itself. Courts

owe a particularly high obligation to adhere to an agency interpretation where Congress has expressly delegated responsibility for implementing statutory details to that agency. Under *Chevron*, interpretations of legislation or regulations established under a specific statutory direction of Congress are given "controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." *Chevron USA v. Natural Resources Defense Council, supra*, 467 U.S. at 843-44. In these instances, "the highest level of deference to regulatory authorizations" is required when there has been an explicit delegation of congressional authority. *Ortiz v. Rental Management, Inc.*, 65 F.3d 335, 339 (CA 3 1995); *Hanson v. Espy*, 8 F.3d 469 (CA 7 1993); *Community Hospital v. Sullivan*, 986 F.2d 357 (CA 10 1993); and cases cited therein. The Court's reaffirmation of *Chevron* in *Mead* earlier this year specifically adopts this high standard of deference in situations of express statutory delegation of responsibility to an agency. *United States v. Mead Corporation, supra,* at 121 S.Ct. at 2171. This high standard, rather than the lesser standard of reasonableness, constitutes the test which the Michigan Supreme Court was required to apply in considering the ICC's statutory interpretation.

There is no question that the ICC's determination was expressed in a setting which was appropriate to give that determination sufficient binding effect. The decision of the ICC was issued as part of its opinion in a rulemaking proceeding properly noticed in the Federal Register in accordance with all requirements of the Administrative Procedure Act. The ICC decision served January 22, 1993 which produced the final decision in *Single State* gave specific notice to all parties that the issue of reciprocity agreements would be addressed in the final rulemaking decision. *Single State Insurance Registration, supra*, at 1993

WL 17833, *4. Full notice and an opportunity to comment on this issue accordingly were provided to all interested parties[13].

The ICC's final determination concerning reciprocity moreover constituted an explanation of the specific rules which it was issuing. One of those rules, 49 C.F.R. 1023.4(c)(4)(ii), contained the November 15, 1991 fee requirement. The ICC's explanation of that requirement constituted the agency's interpretation of its own regulation. Under the settled jurisprudence of this court, an agency's interpretation of its own properly promulgated regulations is entitled to deference. *Auer v. Robbins, supra* at 519 U.S. 461; *Christensen v. Harris County, supra* at 529 U.S. 587; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359, 109 S.Ct. 1835; 104 L.Ed. 2d 351 (1989); *Bowles v. Seminole Rock and Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 89 L.Ed. 1700 (1945). The ICC's determination that reciprocity based fees are required to be continued in effect under SSRS is entitled to deference under *Mead* and *Chevron*.

There is no merit to the conclusion of the Michigan Supreme Court majority that the requirements of *Chevron* and *Mead* may be avoided because the majority's interpretation of the statute was dictated by the "plain meaning" of its terms, thus making the statute non-ambiguous. (Pet. App. 9a). The decisions of the ICC, the D.C. Circuit, the two lower Michigan courts, and the two dissenting justices clearly refute such an argument. In particular, the dissenting opinion of Justice Kelly points out that it is not unreasonable to conclude that fee levels established by the MPSC under reciprocity authorization granted by the second sentence of Michigan's fee statute are entitled to the same consideration as the so-

[13] Indeed, as a party in the *Single State* proceeding, the Michigan Public Service Commission arguably is bound by its results as affirmed by the D.C. Circuit under procedures for judicial review required under 28 U.S.C. § 2342.

called "generic" fee levels established by the first sentence of that statute. (Pet. App. 13a). As Justice Kelly noted in her dissent, it is the Michigan Supreme Court majority's construction of the statute that its strained, because that construction assumes that the state "collected or charged" a $10 per vehicle fee which it in fact did not collect or charge because of its reciprocity agreement. (Pet. App. 14a).

As Justices Kelly and Cavanaugh both point out, where reasonable minds can differ concerning interpretation of a statute, the statute is ambiguous. (Pet. App. 12a-13a, 17a). The D.C. Circuit in construing the same statutory provisions found that the "plain language of the statute precludes"allowing states to charge fees higher than those in place under reciprocity agreements on November 15, 1991. *National Association of Regulatory Utility Commissioners v. ICC, supra*, at 41 F3d 729.[14] Such findings clearly are those of "reasonably well-informed persons" which should be considered in determining whether the SSRS statute is, at very least, ambiguous. (Compare Pet. App. 17a). The Michigan Supreme Court's virtually unsupported statement that the plain meaning of the SSRS statute supports its position should not be accepted.

[14] While the Michigan Supreme Court majority opinion characterized this finding as one of deference (Pet. App. 7a), the D.C. Circuit finding clearly interprets the statute on its own merits rather than under any standard of deference to the ICC.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

Court of Claims: 95-015706-CM
SC: 113656
COA: 194703

YELLOW FREIGHT SYSTEM, INC.,
Plaintiff-Appellee,

v.

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE TREASURER, DEPARTMENT OF COMMERCE, DIRECTOR OF DEPARTMENT OF COMMERCE, MICHIGAN PUBLIC SERVICE COMMISSION and MICHIGAN PUBLIC SERVICE COMMISSIONERS,
Defendants-Appellants.

113656
11 Oct 2000
Entered: May 15, 2001

ORDER

This cause having been brought to this Court by appeal from the decision of the Court of Appeals and having been argued by counsel and due deliberation having been had thereon by the Court, IT IS HEREBY ORDERED that the judgment of the Court of Appeals is REVERSED and the cause is REMANDED to the Court of Claims for further proceedings in conformity with the opinion filed herein.

APPENDIX B

MICHIGAN SUPREME COURT

Docket No. 113656.
Calendar No. 11.

YELLOW FREIGHT SYSTEM, INC,
Plaintiff-Appellee,

v.

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY and its STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE and its DIRECTOR, and MICHIGAN PUBLIC SERVICE COMMISSION and its COMMISSIONERS,
Defendants-Appellants.

Argued Oct. 11, 2000
Decided May 15, 2001

OPINION

WEAVER, C.J.

This case presents an issue of statutory interpretation. Plaintiff, Yellow Freight System, Inc., alleges that defendants collected registration fees in excess of the amount allowed under the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), 49 U.S.C. 11506, which restricts a state's registration fees to an amount "equal to the fee . . . that such state collected or charged as of November 15, 1991," 49 U.S.C. 11506(c)(2)(B)(iv)(III). Specifically, plaintiff contends that in determining the amount of the fee charged or collected on November 15, 1991, one must consider the effect that any then existing reciprocity agreements had on the fees.

We reject plaintiff's claims and hold that in determining the "fee . . . collected or charged" under 49 U.S.C. 11506(c)(2)(B)(iv)(III), Michigan's reciprocity agreements are irrelevant. We reverse the Court of Appeals decision affirming the Court of Claims order for summary disposition in favor of plaintiff and remand this case to the Court of Claims for further proceedings consistent with this opinion.

I

Congress has the power to "regulate Commerce . . . among the several States" and "[t]o make all Laws which shall be necessary and proper for carrying into Execution" that power to regulate commerce. U.S. CONST., art. I, § 8. Under the Commerce Clause, states can impose significant regulatory burdens on interstate motor carriers only when authorized to do so by Congress. *Michigan Pub. Utilities Comm. v. Duke*, 266 U.S. 570, 577, 45 S.Ct. 191, 69 L.Ed. 445 (1925). Over the years Congress has authorized the states to require registration of interstate motor carriers, subject to the supervision of the Interstate Commerce Commission. See Motor Carrier Act of 1935, P.L. 74-265, 49 U.S.C. 301 *et seq*. In 1991, Congress passed the ISTEA,[1] which directed the Interstate Commerce Commission (ICC) to restructure the then existing regulations governing vehicle registration and registration fees. 49 U.S.C. 11506. As a result, the ICC issued the "single state" registration system (SSRS) in 1993, 49 C.F.R. 1023.[2]

A brief overview of the previous interstate motor carrier registration system is helpful in understanding the dispute now before this Court. Before 1991, states could require interstate motor carriers to annually register and pay fees on each vehicle that operated within its borders. Thirty-nine

[1] Provisions similar to those in this section are now contained in 49 U.S.C. 14504.

[2] This was redesignated in 1996 as 49 C.F.R. 367.

states, including Michigan, elected to participate in a "bingo card" system.[3] Under the "bingo card" system interstate motor carriers attached a "bingo card" to each of their motor vehicles. States through which the vehicle traveled then issued each vehicle a registration "stamp" which was placed in a designated area on the bingo card. Participating states were allowed to charge no more than $10 per stamp.

While operating under the prior "bingo card" registration system, some states entered into reciprocity agreements, under which a state would discount or waive the registration fee for carriers based in the other's state. The motor carrier's principal place of business was most commonly used as the basis for determining reciprocity. Michigan, however, initially based its reciprocity agreements on the state in which the vehicle was "base-plated," i.e. where it was registered or license-plated.[4]

Seeking to "benefit the interstate carriers by eliminating unnecessary compliance burdens" and "to preserve revenues for the states which had participated in the bingo program," Congress replaced the old system by enacting the ISTEA.[5] The SSRS was intended to serve as the sole avenue for state registration of interstate carriers.[6] *Nat'l Ass'n of Regulatory*

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[3] The "bingo card" system served three main purposes: (1) to make it easier to determine whether a specific vehicle had been registered by simply looking at the "bingo card," (2) to ensure compliance by interstate motor carriers to register all vehicles in operation, and (3) to prevent carriers from operating uninsured vehicles.

[4] In other words, Michigan would waive its registration fee for vehicles base-plated in a state that waived its fee for vehicles that were base-plated in Michigan.

[5] H. R. Conf. Rep. No. 102-404, 102nd Cong., 1st Sess. 437 (1991), reprinted in 1991 U. S. Code Cong. & Admin. News, 1526, 1679, 1817.

[6] Participation in the SSRS was limited to the thirty-nine states that had elected to participate in the "bingo card" program. 49 U.S.C. 11506(c)(2)(D)

Utility Comm'rs v. Interstate Commerce Comm., 309 U.S. App. D.C. 325, 41 F.3d 721 (1994). Under the SSRS a motor carrier registers annually with only one state. This "registration state" is responsible for collecting the per-vehicle fees and distributing them to any participating states through which the carrier runs its motor vehicles. 49 U.S.C. 11506(c)(2)(A)(iii).

The section of the ISTEA at issue in the present case is subsection 11506(c)(2)(B)(iv). It provides that each state "shall establish a fee system" that "result[s] in a fee for each participating state that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. . . ."

In 1991, before the implementation of the SSRS, the Michigan Public Service Commission (MPSC) altered its reciprocity agreements. The MPSC adopted the more common "place of business" method of determining reciprocity, instead of the "base-plated" system that the MPSC had been using. This change was scheduled to become effective in February 1992. The MPSC mailed renewal applications reflecting this change to all interstate motor carriers, including the plaintiff, in September 1991. Plaintiff paid its 1992 fees[7] in September of 1991, under protest. Subsequently, plaintiff instituted this litigation.

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[7] At that time plaintiff's principal place of business was in Kansas, and it had 3,730 vehicles base-plated in Illinois and Indiana. Under Michigan's old reciprocity agreements, Michigan's fees for those 3,730 vehicles base-plated in Illinois and Indiana would have been waived. However, after Michigan changed its method for determining reciprocity to one based on a company's principal place of business, Plaintiff was required to pay a $10 vehicle registration fee for each of the 3,730 vehicles. Thus, rather than paying nothing under the old reciprocity method, plaintiff was required to pay $37,300 annually under Michigan's new system.

Plaintiff contended that Michigan could not alter its reciprocity agreements, arguing that under the federal statute those agreements were frozen at their November 15, 1991, levels. Ruling on cross motion, the Court of Claims agreed with plaintiff and granted its motion, in part, for summary disposition.[8] In a two-to-one decision, the Court of Appeals affirmed the Court of Claims ruling. 231 Mich.App. 194, 585 N.W.2d 762 (1998). This Court granted leave to appeal, 461 Mich. 1009, 611 N.W.2d 796 (2000).

III

There is no dispute that 49 U.S.C. 11506(c)(2)(B)(iv)(III) froze the registration fees that a state can charge as of November 15, 1991. The parties dispute the proper interpretation of a key phrase in that section of the ISTEA: "equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The fundamental question before us is whether Michigan's reciprocity agreements should be considered in determining what fees were charged or collected as of November 15, 1991. We conclude that under the plain language of the statute, reciprocity agreements are not relevant in making that determination.

A

This is an issue of first impression for this Court; nor have any other state courts addressed it. The only court that has considered it is the District of Columbia Circuit Court of Appeals, *Nat'l Ass'n of Regulatory Utility Comm'rs, supra*. That court followed the ICC's decision.[9] However, the ICC

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[8] Plaintiff's complaint also sought attorney fees under 42 U.S.C. 1988. The Court of Claims did not grant this relief, and plaintiff has not appealed that decision to this Court.

[9] The ICC has taken varying positions on this issue. In its Advance Notice of Proposed Rulemaking, 57 Fed. Reg. 20,072 (1992), and its Notice of Proposed Rulemaking, 58 Fed. Reg. 5951 (1993), the ICC found

subsequently reversed its position, and now says "we have concluded that participating States must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of Nov 15, 1991, as required by § 11506(c)(2)(B)(iv)." *Single State Ins. Registration* Exparte No. MC-100 (Sub-No. 6), 9 I.C.C.2d 610, 618-619 (1993). to ban states from charging registration fees in excess of preexisting reciprocal discounts, saying:

> [W]e think the Commission was correct in concluding that the plain language of the statute precludes petitioners' interpretation. It does not matter whether Congress actually focused on the reciprocal discount practice or even was aware of it. Nor is it of any significance that the Commission initially misread the statute; that is what comment periods are for. *Id*., at 729.

We are not bound to follow that decision,[10] and, for the reasons given below, we do not agree with the federal court's decision to defer to the ICC's interpretation of the ISTEA.

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that the reciprocity agreements were made voluntarily, and that there was no good reason for the ICC's involvement in them. The ICC had noted that "it might place a heavy administrative burden on a registration State were we to require that it collect from different carriers different fees from the same State depending on the various reciprocal agreements negotiated by the various states in which each carrier operates." 9 I.C.C.2d 610, 617 (1993).

[10] Michigan adheres to the rule that a state court is bound by the authoritative holdings of federal courts upon federal questions, including interpretations of federal statutes. *See Bement v. Grand Rapids & Indiana R. Co.*, 194 Mich. 64, 160 N.W. 424 (1916), and *In re Hopps Estate*, 324 Mich. 256, 36 N.W.2d 908 (1949). However, where there is no United States Supreme Court decision upon the interpretation in question, the lower federal courts' decisions, while entitled to respectful consideration, are not binding upon this Court. *See Winget v. Grand Trunk W. R. Co.*, 210 Mich. 100, 117, 177 N.W. 273 (1920), *Schueler v. Weintrob*, 360 Mich. 621, 105 N.W.2d 42 (1960), and 21 CJS, Courts, §159, pp. 195-197.

B

Plaintiff contends that in interpreting the ISTEA we must give deference to the ICC's interpretation. Because the issue is the interpretation of a federal statute and the deference due a federal agency's construction of that statute, we will apply the rules of construction set out by the federal judiciary.[11] The seminal case is *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). There the United States Supreme Court established that a court must first determine whether the statute's meaning is clear; if so, then the court must apply the statute as written. If the statute is ambiguous, then the court must give deference to the agency's interpretation.

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue,

[11] This Court has not previously determined what deference the courts of this state owe to a federal agency's interpretation of a federal statute. However, in that circumstance the Court of Appeals has applied the federal standards of deference as set out in *Chevron*, supra at 2778. *See Walker v. Johnson & Johnson Vision Products, Inc.*, 217 Mich. App. 705, 713, 552 N.W.2d 679 (1996), *Gibbs v. General Motors Corp.*, 134 Mich. App. 429, 432, 351 N.W.2d 315 (1984), and 231 Mich. App. at 200, 585 N.W.2d 762. This is also the approach taken by several other state courts. See for example: *Totemoff v. State*, 905 P.2d 954, 967 (Alaska, 1995), *Delorme v. North Dakota Dep't of Human Services*, 492 N.W.2d 585, 587, n. 2 (N.D., 1992), *Rodriguez v. Perales*, 86 N.Y.2d 361, 367, 657 N.E.2d 247, 633 N.Y.S.2d 252 (1995), and *Bell Atlantic Mobile, Inc. v. Dep't of Public Utility Control*, 253 Conn. 453, 470, 754 A.2d 128 (2000).

> the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. *Id.* at 842-843, 104 S.Ct. 2778.

Here we find that the plain meaning of the terms of the ISTEA is clear, and we apply the statute as written. Because we find that the statute is not ambiguous[12], we need not proceed to the second step of *Chevron, supra*, and we do not reach the agency's interpretation.

C

The question before us is whether any then-existing reciprocity agreements should be considered when determining what fee the state charged or collected as of November 15, 1991. The ISTEA itself refers only to the fee collected or charged, and contains no reference to reciprocity agreements. 49 U.S.C. 11504(c)(2)(B)(iv)(III) directs the ICC to "establish a fee system" that "result[s] in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The new "fee system" is based not on the fees collected from one individual company, but on the fee system that the state had in place on November 15, 1991. We must look not at the fees paid by plaintiff in any given year, but at the generic fee Michigan charged or collected from carriers as of November 15, 1991.

[12] The dissent contends that the statute is ambiguous, asserting that this is demonstrated by "the several interpretations of its wording advanced by the parties." If the parties' conflicting interpretations were the measure of a statute's ambiguity, then almost every statute litigated would be deemed ambiguous. A statute is not ambiguous because it requires careful attention and analysis.

To determine what registration fee Michigan charged on November 15, 1991, we examine M.C.L. § 478.7(4); MSA 22.565(1)(4) in the Motor Carrier Act. Since 1989 that statute has provided for a fee of $10 to be charged for those motor carrier vehicles operating in Michigan and licensed in another state or province of Canada:

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00.

The same statute, M.C.L. § 478.7(4); MSA 22.565(1)(4), also gives the commission the ability to waive the $10 fee under certain circumstances:

> The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

Thus, under M.C.L. § 478.7(4); MSA 22.565(1)(4), the fee charged as of November 15, 1991, was $10. While that fee may be waived, and thus not "charged or collected," for a particular carrier under a reciprocity agreement, such voluntary agreements to waive the fee that happen to benefit a particular carrier do not affect the *generic* per vehicle fee in place on November 15, 1991. As stated, the clear focus of 49 U.S.C. 11506(c)(2)(B)(iv)(III) is on the generic "fee" that Michigan charged or collected as of November 15, 1991, and not on whether that fee was charged to or collected from a particular carrier.

The ICC's position that "participating States must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of Nov 15, 1991, as required by §11506(c)(2)(B)(iv)," [13] added a concept not

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[13] *Single State Ins. Registration* Exparte No. MC-100 (Sub-No. 6), 9 I.C.C.2d 610 (1993)

within the express language of the statute. It added consideration of voluntary agreements between the states to waive or reduce the fees imposed. It is not for the ICC, or this Court, to insert words into the statute.

IV

We hold that Michigan's reciprocity agreements are not relevant in determining what fee was "charged or collected" as of November 15, 1991. The lower courts erred in granting summary disposition for plaintiffs. We reverse the Court of Appeals decision, and remand this case to the Court of Claims for further proceedings consistent with this opinion.

CORRIGAN, C.J., and TAYLOR, YOUNG, and MARKMAN, JJ., concurred with WEAVER, J.

DISSENTING OPINION

MARILYN J. KELLY, J. (dissenting).

I disagree with the majority's conclusion that reciprocity agreements are not relevant in determining the registration fees that Michigan charged under the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), 49 U.S.C. 11506.[1] One such agreement waived registration fees for vehicles licensed in Illinois, including plaintiff's vehicles, so that no fee was collected or charged within the meaning of the statute. Consequently, I would affirm the decisions of the Court of Appeals and the Court of Claims.

The ISTEA replaced the bingo card system of registering interstate motor carriers with a single state registration system. *Nat'l Ass'n of Regulatory Utility Comm'rs v. Interstate Commerce Comm.*, 309 U.S. App. D.C. 325, 328, 41 F.3d 721 (1994). Under the ISTEA system, a state can charge a fee "that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. 11506(c)(2)(B)(iv)(III). The question in this case is what effect reciprocity agreements have on determining the fee that Michigan can charge under the single state registration system.

As an initial point, I disagree with the majority's conclusion that the meaning of the language in the statute is plain, reasonably susceptible of only one interpretation. Rather, I find it ambiguous. A statute is ambiguous when reasonable minds could differ as to its meaning. *In re MCI Telecommunications Complaint*, 460 Mich. 396, 411, 596 N.W.2d 164 (1999). That the ISTEA is ambiguous as regards the reciprocity agreements is demonstrated by the several interpretations of its wording advanced by the parties and by justices on this Court. The language of the statute supports both positions, allowing for opposing and similarly plausible

[1] The ISTEA now appears at 49 U.S.C. 14504.

constructions. Despite careful attention and analysis, reasonable minds can and do differ with respect to the statute's meaning concerning reciprocity agreements.

Alternatively, if the statute's language were plain, the meaning of the words "collected or charged" must lead to a result opposite that reached by the majority. The majority concludes that Michigan was entitled to charge plaintiff a registration fee, but the majority's interpretation of the ISTEA depends on addition to the statute of words not present there. Whether the state of Michigan could have collected or charged a "generic" per vehicle fee is not pertinent. The statute specifies "fees . . . collected or charged as of November 15, 1991." It does not say "fees that the state could have collected or charged."

While the ISTEA does not expressly make reference to reciprocity agreements, the fee system in place on November 15, 1991, does. MCL 478.7(4); MSA 22.565(1)(4) provides:

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

A plain reading of this provision leads to the conclusion that reciprocity agreements are an inherent part of the state's registration fee system. The generic fee levied under the statute is not absolute, but subject to reciprocity agreements that waive the fee. Thus, the fee charged as of November 15, 1991, was $10.00, unless a reciprocity agreement pertained. Voluntary agreements to waive the fee are relevant in determining the per vehicle fee system in place on November 15, 1991, as well as the fee collected or charged pursuant to that system.

The parties do not dispute that Michigan had a reciprocity agreement with Illinois that, by its terms, waived Michigan registration fees for interstate motor carriers licensed in Illinois. Pursuant to the agreement, the state did not charge registration fees for plaintiff's vehicles in 1990 and in 1991. It was not until Michigan revised its reciprocity system in 1991 that it charged plaintiff a registration fee.

This change in the reciprocity system did not become effective until the 1992 registration year. Plaintiff was not charged a registration fee in Michigan, nor was one collected from it in Michigan for the 1991 registration year. The fact that the state had a right to or could have charged a "generic" registration fee does not change the fact: it did not charge plaintiff a fee until the 1992 registration year.

The majority's characterization of the language of the statute as " plain" is belied by the fact that the majority is obliged to construe the phrase "collected or charged" to reach its result. Only a strained reading of "collected or charged" leads to the conclusion that the state charged a fee when it did not do so. That the statute does not expressly mention reciprocity agreements does not change the fact that reciprocity agreements were an inherent part of the fee system in place on November 15, 1991. In this case, the reciprocity agreement with Illinois in effect during the 1991 registration year caused Michigan to waive the fees it might have imposed under M.C.L. § 478.7; MSA 22.565(1). As a consequence, no fees had been "collected or charged as of November 15, 1991."

The Court should give deference, as did the District of Columbia Circuit Court of Appeals,[2] to the Interstate Commerce Commission's construction of the language in question, because it is based on a permissible construction of the ISTEA. *Chevron, U.S.A., Inc. v. Natural Resources*

[2] *Nat'l Ass'n of Regulatory Utility Comm'rs, supra.*

Defense Council, Inc., 467 U.S. 837, 842-844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). It should affirm the decisions of the Court of Appeals and the Court of Claims in favor of plaintiff.

MICHAEL F. CAVANAGH, J. (dissenting).

I disagree with the majority's conclusion that the relevant provision of the federal Intermodal Surface Transportation Efficiency Act (ISTEA), 49 U.S.C. 11506(c)(2)(B)(iv)(III), is unambiguous and that this Court is free to decide that the section does not take into account reciprocity agreements. Rather, I conclude that this provision is ambiguous, and that the Interstate Commerce Commission (ICC) has permissibly construed it to take into account reciprocity agreements. Under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), then, this Court should defer to the ICC's interpretation of that provision. I, therefore, would affirm the judgment of the Court of Appeals, and must respectfully dissent.

In this case, the Court is called on to review a federal statute that was administered by the ICC when this case arose.[1] As the majority points out, under the Supreme Court's decision in Chevron, when a court reviews an agency's construction of a statute the agency administers, the court faces a two-part inquiry. First, the court must determine whether the statute clearly and unambiguously expresses the legislative intent. If so, it then must give effect to the statute as written. However, if the statute is not clear and unambiguous, the court "does not simply impose its own construction on the statute," but instead reviews whether the agency has permissibly construed the statute. If it has, the court should defer to the agency's construction. *Chevron* at 842-843, 104 S.Ct. 2778. As alluded, the ICC, in *Single State Insurance Registration*, 9 I.C.C.2d 610, 618-619 (1993),

[1] The ICC was abolished in 1996, and the references to the ICC in the governing statute, which was recodified, were changed to refer to the Secretary of Transportation. See 49 U.S.C. 14505; see also PL 104-88, 109 Stat. 803, tit. I, § 103.

construed the statute in question to take into account reciprocity agreements that exempted some interstate carriers from state fees, a conclusion opposite to that reached by the majority.

To determine whether a statute clearly and unambiguously expresses legislative intent, courts begin with the statutory language. If the words of a statute are clear and unambiguous, the court must apply them as written, and no further judicial construction is required or permitted. See, e.g., *Tryc v. Michigan Veterans' Facility*, 451 Mich. 129, 135, 545 N.W.2d 642 (1996). However, when there can be reasonable disagreement over a statute's meaning, see *People v. Adair*, 452 Mich. 473, 479, 550 N.W.2d 505 (1996), or, as others have put it, when a statute is capable of being understood by reasonably well-informed persons in two or more different senses, that statute is ambiguous. See 2A Singer, Statutes & Statutory Construction (6th ed.), §45.02, pp. 11-12. For example, this Court has concluded that statutes have been ambiguous when one word in the statute has an unclear meaning, see *Perez v. Keeler Brass Co.*, 461 Mich. 602, 610, 608 N.W.2d 45 (2000), when a statute's interaction with another statute has rendered its meaning unclear, see *People v. Denio*, 454 Mich. 691, 699, 564 N.W.2d 13 (1997), or when application of the statute to facts has rendered the correct application of the statute uncertain, see *Elias Bros. v. Treasury Dep't*, 452 Mich. 144, 150, 549 N.W.2d 837 (1996).

In this case, the majority concludes that the governing ISTEA provision is plain and unambiguous. In the words of our prior decisions, then, the majority concludes that there cannot be reasonable disagreement over the statute's meaning, and that reasonably well-informed people cannot understand the statute in two or more different senses. Before amendment, the governing section provided that the ICC, and through it, states

> shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates; (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. . . . [49 U.S.C. 11506(c)(2)(B)(iv).]

I cannot agree that the meaning of this language is clear and unambiguous. Rather, it is subject to reasonable disagreement.

The majority concludes that the fee "collected or charged" refers only to the fee system a state had in place on November 15, 1991, and that this is clear from the plain meaning of § 11506(c)(2)(B)(IV). *See* op. at — - —, 627 N.W.2d at 242. However, the conclusion that the fee "collected or charged" refers only to the fee system requires that "collected or charged" include the possibility that the fee "charged" can be simultaneously "waived." *Id.* at —, 627 N.W.2d at 242. Otherwise, there would be no question that the state had not collected or charged anything from plaintiff until the changes in the reciprocity system became effective in 1992, after the cutoff date provided in § 11506. The conclusion that a fee can be "charged," yet concurrently "waived," though, is not consistent with this Court's approach to plain language.

When construing a statute according to its plain language, unless the statute itself dictates otherwise, this Court generally turns to dictionary definitions of the statutory terms to find those terms' ordinary and generally accepted meanings. *See*, e.g., *Denio* at 699, 564 N.W.2d 13. Applying this approach to the instant case calls the majority's conclusion that a fee can be simultaneously "charged" and

waived into question. "Charge" is defined variably as (1) "To hold financially liable; demand payment from," (2) "To demand or ask payment," (3) "A financial burden, as a tax or lien," (4) "To set or ask (a given amount) as a price," (5) "Expense; cost," or (6) "The price set or asked for something." *The American Heritage Dictionary* (2d College ed, 1982).

The problem in this case is that the ordinary and generally accepted meanings of the term "charge" do not dictate the majority's conclusion. Rather, the definitions of "charge" present a spectrum of concepts ranging from those that might encompass the majority understanding that a fee can be "charged" but concurrently "waived"—definitions 4, 6, and arguably 5—to those that do not encompass that understanding because they require that the charge be a "demand" or a "burden." Definitions 1, 2, and 3 do not support the majority's conclusion because, under those meanings of "charge," the state would have to waive a fee, yet also hold a carrier financially liable for it, or demand or ask for payment of a fee that had been waived. Similarly, if a fee has been "waived," it is not a financial burden on the party responsible for the fee. In this case, plaintiff was not made financially liable for, or financially burdened with, the waived fee, and the state did not demand the waived fee before November 15, 1991. Thus, although several accepted definitions of "charge" support the majority conclusion, several others weigh against it.

As mentioned above, the meaning of a facially unambiguous term can be ambiguous in certain circumstances. *See Denio* at 699, 564 N.W.2d 13; *Perez* at 610, 608 N.W.2d 45. Thus, although "charged" may not at first blush appear ambiguous, in the context of a fee that was established in a fee system, but never demanded because of a reciprocity agreement, "charged" is ambiguous because the fee may or may not fit the definition of a fee that is

"charged." If the statutory term "charged" is narrow and requires a demand for payment, the state had not charged plaintiff the fees before November 15, 1991, and cannot charge plaintiff for later years. On the other hand, if "charged" is broad and requires only the setting of a fee, the state had charged the fee by the cutoff date, and plaintiff cannot avoid payment. Compare *Perez* at 610, 608 N.W.2d 45 ("refuses" could have a broad or narrow meaning).

Although it does so without explanation, the majority chooses the latter meaning, concluding that even when the fee was waived for particular carriers, it still had been charged in general. Op. at —, 627 N.W.2d at 242. I do not contend that the majority has chosen the wrong definition of "charge," or that its conclusion about § 11506's meaning is unreasonable. However, for the majority to come to its conclusion, it had to resolve the ambiguity surrounding the meaning of the statutory term "charged," specifically, whether "charged" was used in its broad or narrow sense.[2] Again, there is room for reasonable disagreement over the proper understanding of these statutory terms. That room for disagreement, though, indicates that we should defer to the ICC understanding. Normally, this Court has a duty to make such a decision. In

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[2] To conclude that the fee "charged" refers only to the fee set by the fee system, the majority must nevertheless conclude that "charged" is broad, meaning only that the state "set a price" for carriers but did not hold a carrier liable for that price. Such an understanding comports only with definitions 4 and 6 above, but not the narrower meaning of "charge" in definitions 1, 2, and 3. Otherwise, the fee "charged" could refer to only a particular fee and not the system itself.

Further, if the majority is correct that the fee charged refers only to the fee system in place, but not the fees charged of particular carriers, then apparently Michigan could waive fees for every carrier operating in the state, under reciprocity agreements or not, but nevertheless continue to be said to "charge" a generic fee. In such a scenario, the majority would apparently conclude that Michigan "charged" a fee even though it held no carrier financially liable for any fee.

this case, however, the different possible meanings of "charged" present an ambiguity in § 11506. Under *Chevron*, rather than this Court imposing its own construction on the statute, we must consider whether the ICC, the agency responsible for administering this statute and which has already resolved this ambiguity in § 11506, did so permissibly.

I conclude that the ICC did permissibly construe the statute, and, therefore, I would defer to that agency. In *Single State*, the ICC considered whether the freeze on registration fees enacted through the ISTEA should take reciprocity agreements into account. It decided that the ISTEA does take reciprocity agreements into account when freezing the fees that states "charged." Thus, an interstate carrier that was not charged any fees before November 15, 1991, because it was operating under a reciprocity agreement, could not be charged fees after that time. See *Single State*, supra at 617-619. This interpretation evidences that the ICC preferred the narrow approach to "charged," concluding that an interstate carrier had not been "charged" a registration fee unless a state had made a demand for the fee, or unless the carrier had been held financially liable for the fee. Under reciprocity agreements, states did not make demands for fees, and did not hold carriers liable for fees. Hence, carriers operating under those agreements were not "charged" before the cutoff date, and could not be charged after it. Though this Court may not prefer the ICC's interpretation of § 11506 or the narrow approach to the term "charged," in light of the different possible meanings of the statute, the ICC approach is certainly a permissible construction. I would, therefore, defer to that agency's interpretation of this section.

In sum, I disagree with the majority's conclusion that 49 U.S.C. 11506 is not reasonably subject to different understandings. Whether the statutory term "charged" is understood narrowly or broadly affects this statute's meaning.

Because the statute can be understood differently, this Court's only role is to consider whether the federal agency responsible for administering this statute, which has already considered the question before this Court, permissibly answered that question. The ICC took a narrow view of the meaning of "charged," but nevertheless a view that is supported by § 11506. I would defer to that agency's view and, therefore, must respectfully dissent.

APPENDIX C

MICHIGAN COURT OF APPEALS

Docket Nos. 194703, 195564.

YELLOW FREIGHT SYSTEM, INC.,
Plaintiff-Appellee,

v.

STATE of MICHIGAN, DEPARTMENT of TREASURY, STATE TREASURER, DEPARTMENT of COMMERCE, DIRECTOR of DEPARTMENT of COMMERCE, MICHIGAN PUBLIC SERVICE COMMISSION and MICHIGAN PUBLIC SERVICE COMMISSIONERS,
Defendants-Appellants.

YELLOW FREIGHT SYSTEM, INC.,
Plaintiff-Appellant,

v.

STATE of MICHIGAN, DEPARTMENT of TREASURY, STATE TREASURER, DEPARTMENT of COMMERCE, DIRECTOR of DEPARTMENT of COMMERCE, MICHIGAN PUBLIC SERVICE COMMISSION and MICHIGAN PUBLIC SERVICE COMMISSIONERS,
Defendants-Appellees.

Submitted April 14, 1998, at Lansing.
Decided Aug. 14, 1998, at 9:15 a.m.

Before RICHARD ALLEN GRIFFIN, P.J., and MCDONALD and O'CONNELL, JJ.

McDONALD, Judge.

Plaintiff, an interstate commercial carrier, brought this action asserting that defendants (the state) had collected registration fees pursuant to M.C.L. § 478.7(4); M.S.A. § 22.565(1)(4) in excess of the amount allowed by federal law, specifically the single-state registration system (SSRS). The Court of Claims, ruling on cross motions for summary disposition, agreed with plaintiff and granted its motion. The court entered judgment in favor of plaintiff for $99,580 plus interest and ordered that the state was barred from further collection of the registration fees until 49 U.S.C. "11506(c)(B)(iv) [sic] is rescinded." In Docket No. 194703, the state appeals this ruling as of right. In Docket No. 195564, plaintiff challenges the Court of Claims' denial of plaintiff's request for attorney fees. We affirm.

I

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA), P.L. 102-240, which substantially amended 49 U.S.C. § 11506[1] and directed the Interstate Commerce Commission (ICC) to reform the licensing and registration system existing in the states. The statute mandated the creation of a new system, the SSRS. The statute required the ICC to prescribe amendments of the previously existing standards and set forth certain requirements for the new standards.[2]

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[1] 49 U.S.C. §11506 was amended and recodified and now appears at 49 U.S.C. §14504. To avoid confusion, we will refer only to 49 U.S.C. §11506.

[2] The registration system in effect before and after the ISTEA is explained in detail in *Nat'l Ass'n of Regulatory Utility Comm'rs v. ICC*, 309 U.S. App. D.C. 325, 41 F.3d 721 (1994).

The provision at issue, 49 U.S.C. § 11506(c)(2)(B)(iv)(III), stated that the amended standards shall establish a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991."

The regulations promulgated by the ICC repeated the phrase "collected or charged as of November 15, 1991" without further explanation. *See* 49 C.F.R. §1023.4(c)(4)(ii) (1995), later redesignated as 49 C.F.R. §367.4(c)(4)(ii) (1996).

Because the statute essentially froze the fees a state could collect at the level existing as of November 15, 1991, the fee system in effect in this state at that time is pertinent to understanding the issues raised in this case. For the 1991 and 1992 registration years, the state collected fees by requiring interstate carriers to buy cab card stamps, also known as "bingo stamps," for each of the carrier's vehicles operating within the state. Each stamp cost $10. Pursuant to M.C.L. § 478.7(4); M.S.A. § 22.565(1)(4), the state had reciprocity agreements with certain other states so that each would waive the fees for vehicles from the other. The dispute arises in part because the state changed the method it used for determining reciprocity. For 1991, the state used the "base-plating system," which means that reciprocity was determined by the state of the vehicle's registration. In early 1991, the Public Service Commission (PSC) decided that it would quit using the base-plating system. Instead, for the 1992 registration year, fees and reciprocity were determined by the carrier's principal place of business. The revised renewal applications were mailed to all interstate motor carriers in September 1991. Importantly, the 1992 fees to be "collected or charged" by the state were based on a calendar year and therefore were not due and owing until January 1, 1992.

The change in the method of determining reciprocity resulted in a substantial increase in the fees plaintiff owed the

state for the 1992 registration year. Under the base-plating system used for 1991, plaintiff paid the state $50 for five vehicles that were "base-plated" in Oklahoma, but paid nothing for 3,730 vehicles "base-plated" in Illinois and Indiana, because those states did not charge fees for vehicles based in Michigan. However, plaintiff's principal place of business is Kansas, which had no fee waiver agreement with Michigan. Therefore, for 1992, plaintiff paid $10 a vehicle, a total of $37,850 under the new system. Plaintiff sent, and the state received, the fees for 1992 before November 15, 1991. Plaintiff voluntarily paid its 1992 fees early in order to prevent any disruption of its trucking activities at the commencement of the January 1, 1992, calendar year.

II

The state argues the Court of Claims erred in determining that the state could not charge plaintiff $10 a vehicle. According to the state, it had "charged or collected" $10 a vehicle as of November 15, 1991. Plaintiff argued, and the Court of Claims agreed, the statute was properly interpreted to refer to the fees charged or collected for the 1991 registration year. We affirm the Court of Claims' decision with regard to this issue.

The Court of Claims' opinion indicates its decision was based on the ICC's decision in *American Trucking Ass'n Ins—Petition for Declaratory Order—Single State Ins Registration*, 9 ICC2d 1184 (1993). In American Trucking, the ICC discussed various issues that had arisen under the SSRS. The plaintiff sought clarification from the ICC concerning the statutory language. The ICC summarized the issue raised by the plaintiff in the following way:

> Yellow [Freight] raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the "bingo" regulations, carriers filed applications between October 1

> and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane.

The ICC resolved the matter as follows:

> Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.

The state argues the court should not have followed American Trucking because it does not comport with the unambiguous language of the statute and renders the November 15, 1991, deadline a "nullity." Therefore, the state argues the decision was not entitled to the deference usually afforded an agency's interpretation of a statute that the agency is charged with enforcing.

This Court has recognized that deference should be given to the interpretation of a federal statute by the agency administering it and that following an agency's interpretation promotes uniformity in application by the states. *Gibbs v. General Motors Corp.*, 134 Mich. App. 429, 432, 351 N.W.2d 315 (1984). Where a statute is silent or ambiguous regarding congressional intent, a reviewing court "should defer to a federal agency's construction of the statute unless the agency's interpretation is unreasonable." *Walker v. Johnson & Johnson Vision Products, Inc.*, 217 Mich. App. 705, 713, 552 N.W.2d 679 (1996), citing *Chevron USA, Inc.*

v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

Congress' intent concerning the allowable fee levels is not clear with respect to the pertinent period for fixing the fee levels. The phrase "as of November 15, 1991" denotes a period that ends on the specified date. However, the statute is silent regarding when the period begins. One could argue a state that had charged or collected fees from a carrier in any year before 1991 was entitled to continue to collect the fees under the SSRS. On the other hand, one could conclude, as the ICC did, that the relevant period was the registration year that included November 15, 1991. We do not believe Congress "had an intention on the precise question at issue. . . ." *Id.* at 843, n. 9, 104 S.Ct. 2778. Because the statute does not reveal congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. *Walker, supra.*

We conclude that the agency's interpretation of the statute was reasonable. In our opinion, the agency acted reasonably in determining the fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991.

Plaintiff's voluntary payment of fees not due and owing does not affect our analysis.

The state also contends the Court of Claims' ruling applying the *American Trucking* decision by the ICC "effectively repeals existing reciprocity agreements and/or alters them to reinstate a previous basis for determining fee waivers thereunder[,]" and thereby "contravenes the Tenth Amendment."[3] This argument has no merit. We disagree

[3] U.S. CONST., Am. X states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

with the premise of the state's argument, i.e., that the Court of Claims' decision repeals or alters any reciprocity agreements. Any effect on a state's ability to alter its reciprocity agreements is the result of Congress' decision to freeze fees at the level as of November 15, 1991. Congress has the authority to take this action under the Commerce Clause, U.S. CONST., Art. I, § 8.

The state argues the language in the *American Trucking* decision by the ICC was not binding on the state because the notice of institution of declaratory action resulting in that decision did not indicate facts specific to Michigan. We disagree. The Court of Claims did not conclude that the ICC decision in *American Trucking* was binding on the state. However, the court could not properly disregard the agency's interpretation of a statute merely because the state did not participate in the proceeding. The state has not provided, nor are we aware of, any authority holding that an alleged deficiency in the notice of institution of declaratory action affects judicial review of an agency's interpretation of a statute.

The state also suggests that states should not be required to consider reciprocity agreements in determining the amount of fees "charged or collected as of November 15, 1991." In *Single-State Ins Registration*, 9 ICC2d 610 (1993), the ICC determined that states must consider the reciprocity agreements. The ICC's decision in this regard was upheld in *Nat'l Ass'n of Regulatory Utility Comm'rs v. ICC*, 309 U.S. App. D.C. 325, 41 F.3d 721 (1994). Although that decision is not binding on this Court, we find it persuasive and adopt its ruling with regard to this issue.

III

We also reject the state's argument that governmental immunity, M.C.L. § 691.1407; M.S.A. § 3.996(107), bars plaintiff's action. The wrong alleged by plaintiff does not fall

within the definition of a tort. This action to recover fees paid in excess of the amount allowed by federal law is analogous to an action to recover illegal taxes. "The remedy to recover illegal taxes paid is in assumpsit for money had and received." *Service Coal Co. v. Unemployment Compensation Comm.*, 333 Mich. 526, 531, 53 N.W.2d 362 (1952), quoting *Salisbury v. Detroit*, 258 Mich. 235, 241 N.W. 888 (1932). An action in assumpsit for money had and received is not an action in tort. Therefore, governmental immunity from tort liability under M.C.L. § 691.1407; M.S.A. § 3.996(107) does not apply.

IV

The state also contends plaintiff was required to request a declaratory ruling from the PSC as a prerequisite to court review. We disagree. The state relies on both §§ 63 and 64 of the Administrative Procedures Act, M.C.L. § 24.263; M.S.A. § 3.560(163) and M.C.L. § 24.264; M.S.A. § 3.560 (164). However, neither section would support reversing the judgment entered in favor of plaintiff.

Plaintiff's action is not accurately characterized as simply an action for a declaratory judgment available under § 64. Rather, as previously discussed, the action was essentially an action in assumpsit for money had and received. Furthermore, only the validity or applicability of rules that had been formally promulgated as rules may be challenged in actions for declaratory judgments under § 64. *See Jones v. Dep't of Corrections*, 185 Mich. App. 134, 137, 460 N.W.2d 575 (1990). The state has not suggested that the collection of fees was pursuant to a rule that had been formally promulgated under the APA. Because plaintiff's action was not a challenge to the validity or applicability of a formally promulgated rule, § 64 of the APA does not require plaintiff to get a declaratory ruling as a prerequisite to judicial review.

To the extent that the state claims that plaintiff was required to get a declaratory ruling under § 63, we also find

that section inapplicable. Section 63 indicates that the agency "may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency." Assuming plaintiff could have requested a declaratory ruling, § 63 does not require plaintiff to do so before seeking judicial review.

V

We next address the relief that the court awarded to plaintiff, specifically, a refund of $99,580, which is the amount collected for 1994, 1995, and 1996. Arguing that a refund is contrary to the United States Supreme Court decision in *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17 (1990), the state requests the remedy be limited to prospective relief commencing at the time of "any final appellate decision" on the issue.

Contrary to the state's argument, we believe that *McKesson* indicates that a refund is an appropriate remedy in this case. In *McKesson*, the United States Supreme Court considered whether prospective relief was an adequate remedy for wholesale liquor distributors who sought a refund of excess taxes they had paid pursuant to Florida's excise tax scheme. The scheme was found unconstitutional because it discriminated against interstate commerce. In determining the appropriate remedy, the Court concluded that due process required more than prospective relief:

> The question before us is whether prospective relief, by itself, exhausts the requirements of federal law. The answer is no: If a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation. [*Id.* at 31, 110 S.Ct. 2238.]

The state cites *McKesson* for its discussion of the "pass-on" defense to an action for a tax refund. See *McKesson*, supra at 47-48, 110 S.Ct. 2238. The state suggests a refund is not necessary if the expense of the unlawfully collected fees was passed on to plaintiff's customers. However, the *McKesson* Court ultimately rejected the defense in that case, id. at 48- 49, 110 S.Ct. 2238. The state has not cited any authority indicating that the pass-on defense has been adopted in this jurisdiction, and we decline to adopt it in this case.

The state also cites *LCI Int'l Telecommunications Corp. v. Dep't of Commerce*, 227 Mich.App. 196, 574 N.W.2d 710 (1997), as support for its argument that plaintiff should receive only prospective relief. In *LCI*, this Court determined that the defendants had consistently misinterpreted a statute for over twenty years, resulting in improper assessments against telecommunications carriers. The Court held that its holding should be applied only prospectively, in part because the ruling was not "clearly foreshadowed." In the present case, the result was clearly foreshadowed by the ICC's decisions in *American Trucking* and *Single-State Registration*, which were issued in 1993, less than a year after the ICC adopted the SSRS.

The state also contends that, if this Court does not limit Yellow Freight to prospective relief, it should order a remand to the PSC to allow the state to change the fee schedule to retroactively surcharge carriers who benefitted from the state's misapplication of the SSRS. The state relies on language in *McKesson* suggesting that, as one of the alternatives to providing a refund to the aggrieved distributors in that case, Florida could assess and collect back taxes from the petitioners' competitors. *Id.* at 40, 110 S.Ct. 2238. However, the adequacy of any remedy necessarily depends on the basis for relief. In *McKesson*, the petitioners were entitled to relief because a statute imposing an excise tax

discriminated in favor of distributors of local products. The remedies the Court approved were ways Florida could undo the discriminatory effects of the statute and make the tax scheme valid under the Commerce Clause. In the present case, plaintiff is entitled to relief because the state collected fees contrary to a statute. Because the purpose of the relief in this instance is not to undo discriminatory effects, surcharging carriers who were allegedly undercharged is unrelated to providing plaintiff with an adequate remedy in this case. The only way to provide plaintiff with "meaningful backward-looking relief," *McKesson*, supra at 31, 110 S.Ct. 2238, to undo the misapplication of the statute is to order a refund of the amounts wrongfully collected.[4] We express no opinion whether the state may surcharge other carriers because that issue is not appropriately before us in the context of this case.

VI

In Docket No. 195564, plaintiff advances several issues relating to the court's denial of plaintiff's motion for attorney fees pursuant to 42 U.S.C. §1988. Although the court did not explicitly rule on the merits of plaintiff's claim under 42 U.S.C. §1983, we conclude that the denial of attorney fees was appropriate because the §1983 claim was not viable against either the state agencies or the state officials.

Case law indicates plaintiff could not prevail in a §1983 action against the state agencies. Section 1983 applies to "person[s]," and the United States Supreme Court has held that a state agency is not a "person" for the purposes of §1983. *Hardges v. Dep't of Social Services*, 201 Mich. App.

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[4] The holding in *McKesson* is limited to situations in which a state places a taxpayer under duress to pay tax promptly when due and limits the taxpayer to challenging the tax after payment. The state does not suggest that plaintiff was given the opportunity to challenge the fees before payment and does not suggest that a distinction should be drawn in this context between the payment of fees and taxes.

24, 27, 506 N.W.2d 532 (1993), citing *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990), and *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989).

Plaintiff was not entitled to relief on the basis of its §1983 claim brought against the state officials acting in their official capacity. Section 1983 claims seeking prospective injunctive relief may be brought against state officials acting in an official capacity. *Will, supra* at 71, n. 10, 109 S.Ct. 2304; *Hardges*, supra. However, the United States Supreme Court has held that a state court cannot grant injunctive or declaratory relief under §1983 in state tax cases when an adequate legal remedy exists. *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm.*, 515 U.S. 582, 115 S.Ct. 2351, 132 L.Ed.2d 509 (1995).

We are not persuaded by plaintiff's attempt to distinguish *Nat'l Private Truck* on the basis that the fees in this case were collected under federal law pursuant to a system implemented by the ICC. Plaintiff contends the principles of comity and federal deference to state authorities underlying the decision in *Nat'l Private Truck* are not relevant in this case. However, federal law does not require that states charge the fees, but rather sets forth the method and limits on states that choose to collect the fees. Plaintiff's contention, "No issues of state tax law or state tax administration are here involved," is disingenuous and does not provide a meritorious basis for distinguishing *Nat'l Private Truck*.

We also disagree with plaintiff's suggestion that the Supreme Court intended its decision in *Nat'l Private Truck* to be limited to taxes and therefore not apply to fees. On the basis of the principles of comity and federalism, the Supreme Court concluded that Congress did not intend §1983 claims to be brought in state tax cases when an adequate state remedy is available. Those principles apply equally well when the revenue collection is in the form of a fee.

VII

The Court of Claims properly granted plaintiff's motion for summary disposition. The state was precluded from collecting fees from plaintiff in excess of the amount charged or collected for the 1991 registration year. Plaintiff is entitled to a refund of the amount improperly collected. We also affirm the Court of Claims' denial of plaintiff's motion for attorney fees pursuant to § 1988 because plaintiff had no viable § 1983 claim against any of the defendants.

Affirmed.

RICHARD ALLEN GRIFFIN, P.J., concurred.

CONCURRING/DISSENTING OPINION

O'CONNELL, Judge (concurring in part and dissenting in part.)

I respectfully dissent from part II of the majority opinion. I find no ambiguity in the statutory provision in dispute and accordingly would instruct the Court of Claims to apply the statutory language according to its plain meaning and not according to the ICC's strained construction.

The primary goal of statutory interpretation is to ascertain and give effect to legislative purpose. *Haworth, Inc. v. Wickes Mfg. Co.*, 210 Mich. App. 222, 227, 532 N.W.2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry Brokers, Inc. v. City of Warren*, 210 Mich. App. 304, 307, 532 N.W.2d 920 (1995). "If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted." *Dep't of Transportation v. Thrasher*, 196 Mich. App. 320, 323, 493 N.W.2d 457 (1992), aff'd. 446 Mich. 61, 521 N.W.2d 214 (1994).

The pertinent language in 49 U.S.C. § 11506 (c)(2)(B)(iv)(III) provides for establishment of a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The majority reasons that this language calls for identifying a "pertinent period" ending November 15, 1991, but that it reveals no congressional intent concerning when this period begins. The majority then resolves this supposed ambiguity by concluding that the provision refers to fees charged for the registration year that includes November 15, 1991. However, this construction disregards the word "collected," and broadens the specific reference, "as of November 15, 1991," to indicate the whole registration year that happens to include "November 15, 1991." This distortion of the plain wording

of the statute is unnecessary and inappropriate. Legislative intent "is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v. General Motors Corp.*, 448 Mich. 147, 160, 528 N.W.2d 707 (1995). The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value. When a statute is clear on its face, judicial construction is unnecessary and inappropriate. *Thrasher, supra.*

As the majority states, it was the intent of Congress to "freeze fees at the level as of November 15, 1991." To determine the particulars of that intent, I would restore "collected" as the companion of "charged," and respect the specificity of "November 15, 1991." A court should presume that every word has some meaning and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc. v. Governor*, 217 Mich. App. 439, 457, 553 N.W.2d 7 (1996). Accordingly, I would read "fee . . . that such State collected or charged as of November 15, 1991" as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991.

The statute does not refer to a "period" ending on November 15, but simply to that specific date. It does not refer only to the fee structure in place at the specified time, but to fees "collected or charged" at that time, identifying fees payable to the state, or already paid to the state (for whatever the reason), as establishing the level at which the fees are to be frozen. The words "as of" in reference to a specific date clearly refer to the status quo in place on that date. Thus, the congressional intent to freeze fees at the rates "collected or charged as of November 15, 1991" plainly recognizes for this purpose both the rates actually charged and those according to which fees were actually collected on that date.

Accordingly, because the state had collected plaintiff's fees as envisioned for the 1992 registration year "as of November 15, 1991," 49 U.S.C. § 11506(c)(2)(B)(iv)(III), by its plain terms, allows the state to continue to assess plaintiff's fees according to the new scheme under which plaintiff had tendered payment by November 15, 1991.

At stake here is the state's interest in collecting higher fees from plaintiff in accordance with recent changes in the state's regulatory scheme, and plaintiff's interest in avoiding those fee increases and continuing to operate under the old scheme. Each party argues that the other stands to receive a windfall if the other's interpretation of the statutory language at issue is adopted. That statutes have the effect, intentionally or not, of benefitting some and burdening others is not a matter of dispute, and the Intermodal Surface Transportation Efficiency Act is no exception. Under any interpretation of 49 U.S.C. § 11506(c)(2)(B)(iv)(III), someone will win and someone will lose. Although the state's reading of the statute to cause plaintiff to have to continue to pay much higher fees simply because plaintiff chose to pay 1992 fees before November 15, 1991, may seem a harsh result, the result is equally harsh if the state is obliged to forgo receiving the higher revenues to which its own laws entitle it simply because the federal statute articulated a date of late 1991 instead of early 1992. For these reasons, I would avoid any concern for who benefits, or who gets burdened, from 49 U.S.C. § 11506(c)(2)(B)(iv)(III) and simply give effect to its plain language.

Although I express no disagreement with the reasoning of part V of the majority opinion, I do not join in that part because it concerns the relief to which plaintiff is entitled, where under my reading of the statute in question plaintiff is not entitled to any relief. I concur with parts III, IV, and VI.

APPENDIX D

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

Case No. 95-015706-CM

YELLOW FREIGHT SYSTEM, INC.,
Plaintiff,

v

STATE OF MICHIGAN, *et al.*,
Defendants.

Hon. William E. Collette
March 13, 1996

OPINION AND ORDER

FACTS

Plaintiff is a commercial hauler operating in interstate commerce throughout the United States. The State of Michigan has assessed a ten dollar ($10) charge, per vehicle, registration fee to Yellow Freight pursuant to 49 U.S.C. § 11506(c). Under this provision, states may assess the fee against interstate motor carriers only if such fee "is equal to the fee, not to exceed $10 per vehicle, that such state collected or charged as of November 15, 1991."

It is undisputed that, prior to the enactment of the above law, individual states were permitted to charge a fee to various carriers operating in interstate commerce. However, the state of Michigan had in place during calendar year 1991 a reciprocity agreement with various neighboring states, including Illinois, that waived imposition of the fee against motor carriers based in Michigan. It is undisputed that no registration fee was charged to Yellow Freight for calendar

years 1990 and 1991 because Illinois had agreed to waive the fee for Michigan motor carriers.

In December, 1991, the Intermodal Surface Transportation Efficiency Act went into effect after being signed by the President. Under this new law, each motor carrier would pay all assessed fees through its home state. Each home state was required to assess and collect fees charged by other states on their behalf.

Pursuant to the above, Yellow Freight dutifully paid its registration fees to the State of Kansas, its home state. In addition, it paid a ten dollar ($10) per vehicle fee to the State of Michigan under protest for calendar year 1994. Likewise, fees were paid under protest for 1995 and 1996.

Prior to the end of 1991, Michigan changed the basis for determining reciprocity. Formerly, the state of licensure of the vehicle was used for the decision. For 1992 and beyond the actual home state of the company was used. In this case, Kansas became the state for determination of reciprocity. As such, the fee was collectible since Kansas had no reciprocity with Michigan.

DECISION

Under the single state registration system enacted in 1991, and effective November 15, 1994, individual states could charge a fee, which does not exceed ten dollars ($10) per vehicle, equal of the fee collected or charged to the carrier as of Nobember15, 1991. In this particular case, there is no dispute that Michigan did not charge any fee to Yellow Freight for calendar year 1991 due to the reciprocity agreement with other states. It is equally clear that a ten dollar ($10) fee was charged to those carriers registered in states that did not waive the fee for Michigan carriers.

Michigan, in anticipation of the new legislation, through the Public Service Commission, changed its method of determining reciprocity prior to October, 1991. Under its

new formula for reciprocity, a carrier's principal place of business would be used to determine reciprocity rather than the state that licensed the trucks owned by the carrier. In this case, Kansas now became the state to be used in determining reciprocity for Yellow Freight in place of Illinois. As the state of Kansas did not waive fees for Michigan vehicles, a ten dollar ($10) fee per truck was charged to Yellow Freight. This fee was properly paid by the Plaintiff on October 3, 1991, for registration in 1992.

The Defendant has taken the position that while it is true that no fee was charged or collected for 1991, there was a fee in place for 1992 that was charged prior to November 15, 1991. Therefore, Michigan was perfectly within its rights in charging the ten dollars ($10) in 1994 and beyond. Plaintiff, relying on the same language of the statute, believes that since no fee was charged in 1991, the fact that a fee for 1992 was put in place should not allow collection of the fee. The issue to be resolved is to determine the correct manner of interpreting this language.

Under the Interstate Commerce Clause, federal law supersedes the authority of individual states to regulate interstate commerce. In this regard, the Interstate Commerce Commission has regulatory authority over the implementation of the various acts of congress controlling the smooth flow of commerce between the states. In interpreting the intent of congress, this Court believes it should give great weight to the interpretation of the law applied to the statute by the agency charged with its enforcement. In this regard, this Court believes that the decision by the ICC in its decision in the *American Trucking* case is dispositive of the issues to be decided here. In *American Trucking*, the issue herein was specifically raised and decided. The commission held that: Yellow has raised the issue of whether statutory language concerning the "fee charged or collected as of November 15, 1991," relates to fees charged for the 1991 registration year or

for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and so we find.

Based upon this interpretation, this court finds that the fees for 1994 though 1996 were improperly charged and are hereby ordered refunded.

Dated: March 13, 1996

/s/ William E. Collette,
WILLIAM E. COLLETTE, Circuit Judge

APPENDIX E

INTERSTATE COMMERCE COMMISSION
SINGLE STATE INSURANCE REGISTRATION
EX PARTE NO. MC-100 (SUB-NO. 6)

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9 ICC 2d 610, Fed Carr. Cas. ¶38,046

Decided May 10, 1993

Effective on May 18, 1993

The Commission is revising its regulations at 49 C.F.R. Parts 1023 and 1162 pertaining to registration by motor carriers with States in accordance with the requirements of the Intermodal Surface Transportation Efficiency Act of 1991. The new regulations replace a multi-State motor vehicle and operating authority registration system with a simplified, single-State insurance-based registration system.

BY THE COMMISSION:

Section 4005 of the Intermodal Surface Transportation Efficiency Act of 1991, Pub.L. No. 102-240, (ISTEA) substantially amended 49 U.S.C. § 11506—Registration of Motor Carriers by a State. The new law, at 49 U.S.C. § 11506(c)(1), requires that, not later than 18 months after its enactment, the Commission prescribe amendments to the standards now codified at 49 C.F.R. PART 1023-STANDARDS FOR REGISTRATION OF CERTIFICATES AND PERMITS WITH STATES.[1] In essence, the new law requires the Commission to replace the existing multi-State

[1] Under the law, the Commission is required to issue a final rule no later than May 18, 1993, that would take effect by January 1, 1994.

authority registration system with a single-State insurance registration system. The so-called "bingo card" program, under which carriers obtain stamps from multiple States, affix them to cards, and carry them in specific vehicles, is to be eliminated.

Amended § 11506 envisions a single State registration system under which a carrier: (1) files proof of insurance with a single registration State; (2) pays fees to that State to be allocated among all the States in which the carrier operates and which participate in the system; and (3) keeps in each of its vehicles a copy of the receipt issued by the registration State. Under the system, the fees collected by the registration State can be no more than the amount per vehicle charged or collected under the bingo card program on November 15, 1991. Notably, amended § 11506 requires that compliance costs be minimized.

In a decision served May 8, 1992, and an Advance Notice of Proposed Rulemaking (ANPR) published at 57 Fed.Reg. 20,072 (1992), we examined the new law and requested the public to participate in the formulation of new permanent regulations. After public comments were reviewed, we proposed new rules in a decision served January 22, 1993, and a Notice of Proposed Rulemaking (NPR) published at 58 Fed.Reg. 5951 (1993). We have likewise reviewed the comments received in response to the decision and NPR, and we now are adopting final rules.

The rules we proposed establish a base State insurance registration program as envisioned by the Congress. The rules include definitions of a limited number of critical terms, borrowing from the regulations used for the bingo card program. Motor vehicles are defined as those operated under authority issued by the Commission. As required by law, eligible States are those that participated in the bingo card program. Selection of a registration State is tied either to the carrier's principal place of business or one of the States where the carrier will pay the largest amount of fees.

The rules include requirements for registration derived from the statute. We proposed two alternatives for the registration receipt issued by the base State. Under the first alternative, a State would issue a single receipt that a motor carrier would copy and distribute to each of its motor vehicles. The proposed rule provided that receipts may not contain information regarding numbers of vehicles declared and/or States of operation. The second alternative would require the registration State to issue a single receipt and a number of official copies equal to the number of motor vehicles for which fees have been paid. Under this proposal, the receipt and copies would contain information identifying the carrier and specifying the number of vehicles declared and amounts of fees paid with respect to each participating State. A motor carrier would not be permitted to copy a receipt or an official copy of a receipt under the second alternative.

There are rules for accounting by registration States to assure standardized collection of fees by the base State and timely allocation of monies to and filing information with participating States. Finally, there are provisions for States to take appropriate action against persons or organizations that violate the rules.

THE COMMENTS

In response to our decision and NPR, we received 52 comments. (The commentors are listed in Appendix A to the decision). Included are 10 carriers and carrier organizations, 30 States and State organizations, seven insurers and insurer groups, two shipper groups, the U.S. Department of Transportation (DOT), and two consulting firms.

The National Conference of State Transportation Specialists (NCSTS) submitted extensive comments addressing many of the specific provisions of the Commission's proposed regulations. The National Association of

Regulatory Utility Commissioners (NARUC) and 22 State agencies specifically endorse or concur width NCSTS's comments. Approximately eight of those State agencies make some points different from those of the NCSTS. The American Trucking Associations (ATA) likewise submitted extensive comments voicing motor carrier concerns.[2] The commentors have raised numerous issues. For clarity, we will discuss the salient issues in two groups—the first involving issues and matters related to specific proposed regulations, and the second involving issues and matters not specifically related to them. (The final rules and the new uniform application form are set forth in Appendix B to the decision).

DISCUSSION AND CONCLUSIONS

At the outset, we will discuss the two issues that engendered the most comment and appear to be the most significant to all concerned: (1) who will be responsible for generating copies of receipts issued under §11506(c)(2)(B); and (2) must participating States consider fees charge under reciprocity agreements among the States when determining the fees charged as of November 15, 1991.

A. Issues and matters specifically related to proposed regulations.

Registration receipts—choice of alternatives. The statute is designed to advance two goals in setting up the State registration program: (1) it seeks to permit States to collect revenues based on the number of trucks a carrier operates; but (2) it seeks to minimize the administrative burdens on the carriers in compiling with the program. Our job is to set up procedures that will effect both of these goals. All

[2] Among the commenting motor carrier interests, North American Van Lines, Inc. (NAVL) and joint commentors American Movers Conference and Household Goods Carriers' Bureau (AMC/HGCB) indicate that they concur with the comments of the ATA.

commentors agree that the first step in the process of recognizing carrier compliance ought to be the preparation by the registration State of a document that will show that a carrier has paid the requisite fees. Where the commentors are deeply divided involves how copies of the registration documentation ought to be made so that they can be carried in each of the trucks registered by a carrier.

As indicated earlier, in the NPR we proposed two alternatives: one under which the registration State would issue a single document that could be copied by the carrier, and the second under which the registration State would provide each carrier with a number of "official" copies equal to the number of vehicles registered. The carrier interests favor the first alternative, on the ground that it would make it more difficult for carriers to evade the law by operating trucks for which fees have not been paid.

The ATA, focusing on the legislative history of the new law, argues that the only document that the statute permits a State to issue is the original receipt. (See §11506(c)(2)(B)(i).) The Interstate Truckload Carriers Conference (ITCC) avers that allowing the carrier to copy and distribute the receipt offers the most flexibility. Not only could a carrier place new vehicles into service without having to wait for official copies to be issued, it says, a carrier also would not have to take vehicles out of service while awaiting the replacement of lost official receipts. NAVL contends that the first alternative comes close to capturing the intent of ISTEA and embodies the approach currently being used by several State agencies with regard to other permits or registrations. The National Private Truck Council (NPTC) supports the first alternative, arguing that relieving carriers of the need to carry original documents removes a sizeable administrative burden.

The NCSTS strongly objects to the first alternative. It argues that its provisions fail to ensure the preservation of revenue or enforceability. The NCSTS avers that roadside

enforcement would be a nullity; a State officer would not be able to tell from a receipt whether a carrier had paid any fees for that State. It contends, also, that a complex audit procedure would be required to determine whether a motor carrier had paid sufficient fees for the number of vehicles operating in a State at any particular time. NCSTS also argues that the first alternative would present disadvantages for a carrier. If offered a load, a driver would not be able to determine from a receipt whether or not he was permitted to travel to a certain State, and a dispatcher might not have the information on hand to advise the driver in the matter. Alabama [3] finds the first alternative inconsistent with the language and intent of ISTEA. Minnesota declares that it is naive to expect complete voluntary compliance, which the first alternative would require. New York argues that allowing carriers to duplicate receipts serves no useful purpose and only provides an opportunity for carriers to circumvent legally required fees. In the view of Texas, the only practical distinction between the two alternatives is that the first does not protect against potential underreporting.

A number of commentors discuss audits in the context of enforcement. The ATA contends that up to 90% of the involved revenue will be paid by 10% of the carriers, a highly visible group that does not pose an enforcement or compliance problem. It asserts, then, that a system of audits would provide an effective means of enforcing fee obligations on smaller carriers. An on-site audit would compare fees paid with carrier records of vehicles owned and operated. AMC/HGCB asserts that States must be willing to enforce the system through an audit process. The American Bus Association (ABA) avers that carrier fraud and abuse are

[3] When referring to the State regulatory agencies participating in this proceeding, we will simply use the appropriate State names. The full names of the agencies are set forth in the list of commentors in Appendix A to the decision.

possible under both alternatives and can be prevented only by effective audit programs. The NCSTS, on the other hand, argues that Congress did not intend that an audit program be created, or it would have spelled out such a requirement in the legislation. Virginia asserts that, although the Commission found that the decision to conduct audits should be left to the States, were the Commission to adopt the first alternative for receipts, the public interest would require Virginia to institute an audit procedure.

Several motor carrier interests assail the second alternative for registration receipts. AMC/HGCB believes that the alternative does not meet ISTEA guidelines and is as cumbersome as the current bingo program. ATA argues that a system embracing the second alternative would be even more costly and burdensome than the bingo system. NAVL asserts that the second alternative would create substantial administrative burdens due to constantly changing fleet patterns.

The NCSTS favors the second alternative, with certain modifications. It asserts that the language of the statute requiring copies of receipts to be kept in each of a carrier's vehicles indicates that Congress intended the program to have an enforcement capability that would be expedient and simple. (See §11506(c)(2)(B)(ii).) NCSTS adds that the second alternative not only imposes a lesser burden than that of the bingo system, but it also involves a lesser burden than the International Registration Plan (IRP) procedure, which requires the routing of vehicle-specific identifiers to vehicles.[4] Texas points out that, under the second alternative, carriers would be relieved of the cost of making perhaps hundreds of copies of receipts to route to their vehicles.

[4] Whether the procedure NCSTS favors is more or less burdensome than the IRP procedure is irrelevant. The statute we are administering prohibits vehicle- specific credentials.

Several commenting insurer interests support the second alternative. The American Insurance Association (AIA) asserts that, without the detailed registration information required by the second alternative, it would be extremely difficult for a registration State to exert effective oversight. The National Association of Independent Insurers (NAII) contends that the second alternative mitigates the potential for fraud or error. Northland Insurance Companies (Northland) avers that the insurance industry needs the assistance of the Commission and the States to control receipts. It argues that carriers should not have the opportunity to make additional copies and run additional units without the insurer's knowledge and consent.

The National-American Wholesale Grocer's Association and International Foodservice Distributors Association (NAWGA) asserts that it is sensitive to States' concerns and would not object to the issuance of official copies so long as the receipt and copies would not be vehicle-specific. Consultant Halsey Traffic Services (Halsey) supports the second alternative. It asserts that anything short of a State-created credential for each vehicle permits too many opportunities and temptations to avoid significant fee payments.

We will adopt a modified version of the first alternative receipt proposal. The language of the statute calls for the base State to issue "a receipt." While the statute does not specify who is responsible for making copies of the receipt to be kept in each commercial motor vehicle, this language suggests that the only paper document a State is permitted to issue is a single receipt. Moreover, considerable guidance on the purpose and intended effects of the new single State registration system is available. Although the statute does not expressly preclude the Commission from facilitating State enforcement programs, the legislative history explains the Commission's primary role: the legislative history explains

that the new system is to be instituted by the Commission "in such a manner as to eliminate as much of the paperwork and other compliance burdens as possible." H.R.Conf.Rep. No. 102-404, 102d Cong., 1st Sess. 440 (1991) (Conf.Rep.). A system in which the base State-issued receipt can be copied and distributed by a carrier to its trucks is the least burdensome way of disseminating the copy of the receipt that must be carried in each vehicle. In our view, permitting the States to issue a receipt along with an "official" copy of that receipt for each of the carrier's vehicles, while it might have an effect on roadside enforcement stops, would still not preclude carriers that wanted to do so from developing means to evade fees. Moreover, such an approach would seem to go beyond Congress' intention and venture into the realm of assisting State enforcement efforts that Congress did not specifically address. (Conf.Rep. at 439).

As required by § 11506(c)(2)(B)(iii), the receipt we are mandating will be non-vehicle-specific. Nevertheless, we will require certain information to be included in the receipt to assist those enforcing the law to determine that the carrier has registered as required by law. Therefore, we will provide, as suggested by NCSTS, that the receipt identify the carrier and specify the States for which fees were paid. By examining the receipt, the State official will know that the carrier has paid fees to register its fleet.

Congress intended to replace the burdensome bingo card system with an administrative process for collecting revenues that would be expedient and simple. We think that States will be fully capable of ensuring that carriers have properly registered their vehicles.[5] And while the information that we

[5] For example, the information provided to the States under IRP and IFTA may facilitate accurate counts of trucks operated in particular States. Moreover, participating States at their discretion may go further and, individually or collectively, audit carrier records, just as we do, to enforce compliance with the law.

will require on receipts will permit some very basic roadside enforcement, the requirements for issuing a receipt and prohibiting any other form of registration credential suggests that more extensive roadside enforcement was not contemplated. In short, we think that permitting carriers to copy their receipts will reduce the burdens on the carriers without substantially impairing the States' efforts to collect the proper fees.

There are other reasons to permit carriers to copy and disseminate the base State issued receipt. For example, such an approach would decrease burdens for carriers by eliminating delays when they add or replace vehicles and it would permit carriers more easily to replace lost or destroyed documents. On balance, we maximize the potential for cost savings and minimize the regulatory and paperwork burdens of the system by permitting the carriers to copy and disseminate the receipt issued by the base State.

Reciprocity Agreements. A number of States participating in the bingo program have been maintaining a variety of reciprocity agreements that have the effect of reducing fees for many carriers. Under these agreements, fees charged to carriers from other States are limited to the fees charged to home State carriers registered in those other States. The comments submitted in response to the ANPR and again in response to the NPR have raised the issue of whether States must consider the reciprocity agreements when determining the fees they collected or charged as of November 15, 1991, the date as of which the statute "freezes" fees. In our NPR decision, we found that the agreements were made voluntarily, and there was no good reason for our involvement in them. We noted, also, that it might place a heavy administrative burden on a registration State were we to require that it collect from different carriers different fees for the same State depending on the various reciprocal agreements negotiated by the various States in which each carrier operates.

The NCSTS does not discuss the issue. The motor carrier industry, on the other hand, discusses the matter extensively. The ATA argues that our proposal would allow States to collect revenues that would exceed what carriers were paying per vehicle under the prior program, contrary to the statute. The ATA asserts that States could realize windfall revenue gains from selective or wholesale rescission of reciprocity agreements. Although retention of the agreements would make fee calculation somewhat more complicated, the ATA asserts, it would not do so to an extent likely to burden either States or the trucking industry. It avers that the terms of agreements in effect as of November 15, 1991, can easily be ascertained and disseminated. The ITCC argues, simply, that fees were frozen by law, and the Commission cannot sanction fees higher than those that were charged or collected. NAVL argues that our ruling would discriminate against States that had only a single fee level; the fees of such States are frozen, but the fees of other States (that participated in various reciprocity agreements) could be raised to $10.

Yellow Freight System, Inc. (Yellow) points out that, on November 15, 1991, Nebraska was charging between $0 and $10 per vehicle. It asserts that carriers from 9 States were charged $10, and carriers from 24 States were charged $1 or less. The fees owed by the latter carriers assertedly could increase as much as 900% to $10 or at least to the actual fee charged by the State. Atlas Van Lines (Atlas) avers that, if States were allowed to eliminate their reciprocity fee structures, Atlas's per unit costs would increase by $55. The Regular Common Carrier Conference (RCCC) argues that, in the worst case scenario, State revenues could increase from $50 million to $200 million, inconsistent with the spirit of ISTEA.

We have concluded that our prior proposal regarding this issue did not carry out the letter of the law that fees be frozen as of November 15, 1991, or the intent of the law that the

flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced. As the motor carrier interests point out, were States to discontinue their reciprocity agreements, per vehicle fees for many carriers could increase greatly, and some States would realize windfalls. While we have not made any independent calculations of exactly how fees would escalate, it is clear that they could rise above the levels permitted by the law. Although the variety of reciprocity agreements might make collection of a range of fees cumbersome for some registration States, the potential burden on the States would be outweighed by the likely cost to carriers that could result were we to adhere to our prior position. In brief, we have concluded that participating States must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of November 15, 1991, as required by §11506(c)(2)(B)(iv).

Definitions. Our proposed definition of motor vehicle did not include a weight threshold, but rather focused on vehicles that were operated subject to ICC jurisdiction. A number of motor carrier interests would exclude vehicles of 26,001 pounds gross registered vehicle weight or less from the registration program. These commentors assert that this approach would be consistent with the approach used in the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA) programs. The ITCC argues that, as records for lighter vehicles are not kept in the same manner as for larger, revenue-generating vehicles, the adoption of the requested threshold would conform to the legislative intent to eliminate paperwork. ATA requests that, as an alternative, the Commission consider the 10,001 pound threshold that DOT uses in its safety regulations. The NCSTS favors the proposed definition.

We do not believe it appropriate to add a weight threshold to our proposed definition. The bingo card program had no

weight threshold for covered vehicles. Imposing a weight threshold now would remove many vehicles from the registration plan's coverage. In enacting the new law, Congress did not evidence any intent to reduce the number of vehicles covered. Rather, one of its stated intentions was to preserve revenues for the States that had participated in the bingo program. To adopt either a 26,001 pound or a 10,001 pound threshold would reduce State revenues, contrary to the Congressional intent.

Under our proposed regulations a carrier would select as its registration State the State in which it maintains its principal place of business. The NCSTS believes that it is important for the Commission to define "principal place of business". (We will discuss arguments concerning the selection criteria below.) We agree with the NCSTS that the term should be defined. The carriers' principal place of business will be defined as the "single location that serves as a motor carrier's headquarters and where it maintains or can make available its operational records."

Participation by States. Under the new law only a State that as of January 1, 1991, charged or collected a fee under the existing 49 C.F.R. § 1023 provisions is eligible to participate as a registration State under the new program. We proposed that, to be eligible to participate as a registration State and to receive fees, a State must continuously participate in the program beginning with the effective date of the regulations. NAWGA supports the proposal, stating that it would be burdensome to carriers if States were permitted to drop out and rejoin the program freely. The Travelers Insurance Company (Travelers) agrees with the continuous participation proposal and recommends adding language to the rules specifically prohibiting reentry after leaving the program.

On the other hand, the NCSTS asserts that it, the ATA, the RCCC, NARUC, and the insurance industry agree that States

should have the option to enter and exit the program with notice. The NCSTS contends that Congress did not intend to limit States' participation at any time.

On further reflection, we conclude that the legislation does not require eligible States to participate in the new program from its inception and continuously thereafter, and as the States, carriers, and insurer groups appear to have agreed that it would not be burdensome to give States the requested flexibility, we will modify the proposed regulations by deleting this extra-statutory restriction. We will also modify the notice provision of the section to reflect the fact that, for any given registration year, States might commence, as well as cease, participation in the program.

Selection of Registration State. As we explained in the ANPR decision, central to the new law is the concept of single State registration. A carrier will register with only one State, which will allocate the fees it collects among the participating States in which the carrier operates. In the NPR we proposed that a carrier would select the State in which it maintains its principal place of business, if the State is a participating State. A carrier that maintains its principal place of business outside a participating State (including a Canada-based carrier) would select the State (or one of the States, in case of a tie) to which the largest amount of its fees during the next registration year would likely be allocated (based on the number of vehicles it intended to operate multiplied by the fee for that State). We determined that a system allowing free choice could force some States to bear disproportionate burdens. The ATA complains that the proposed selection process does not give carriers the operational flexibility they need. The ATA, ITCC, and NAVL support the use of a selection process similar to that used in the IRP. Under the IRP, a carrier can select "the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet, and where

operational records of such fleet are maintained or can be made available * * *." (ATA comments filed February 24, 1993, at 14.) We continue to believe that such a selection process would be unacceptably broad and that our rule will promote simplicity, flexibility and stability. The ATA argues that its recommended method is less likely to promote base State shopping than is the Commission's. We disagree because "principal place of business" is a certain location while "established place of business" could possibly include every State.

On the other hand, we agree with comments of Wisconsin and consultant Joy B. Fitzgerald to the effect that the carriers' second option, involving the largest amount of fees to be paid, can be confusing and not necessarily a reflection of a carrier's presence in a State. We will modify the rules to provide that, if a carrier maintains its principal place of business outside a participating State, it must select the State in which it expects to operate the largest number of motor vehicles during the next registration year. We also will add language clarifying the fact that a carrier may choose between States when it determines that it plans to operate the same largest number in more than one State. We must clarify a point here: a carrier will make its second option determination only one time, not each year. A carrier will be permitted to change its registration State only if it moves its principal place of business or its registration State drops out of the program.[6]

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[6] North Dakota fears that States bordering Canada will be chosen as registration States by most of the Canadian carriers and will be forced to absorb a disproportionate share of the workload involved in administering the program. We advise North Dakota and similarly situated States that, should such a problem occur, they can petition for modification of the rules, and we can address the problem based on a record fully developed with regard to the issue.

Finally, the NCSTS objects to the Commission's proposed provisions requiring a carrier to give notice of its selection to the State Commission of its selected registration State. The NCSTS proposes a rule under which a carrier must notify only a prior registration State that it has selected a new registration State. As the NCSTS does not point out any problem with the Commission's proposed rule, and as its proposal does not give notice to a new registration State, we decline to modify our proposed rule in the manner requested. We find merit, however, in NCSTS's suggestion regarding carriers that must change registration States. We will modify our proposed rules to indicate that, if a carrier changes its principal place of business during the annual registration period, it may continue to use its prior registration State for the next registration year.

Requirements for Registration. We proposed that the annual filing period should run from October 1 through November 30. The NCSTS and the ATA agree that the annual filing period should be a longer 4-month period running from August 1 through November 30. We see no problem with this extended filing period, and we will make an appropriate modification to our proposed regulation.

NCSTS does, however, suggest several other provisions in this area that we are not adopting. This commentor would have the filing period begin in 1994, leaving no regulations in place to govern filings for the 1994 registration year. The NCSTS also proposes regulations requiring States to process applications either within 30 days or in a timely manner, depending on when the applications are received. The old bingo regulations did not have provisions of this nature, and they are even less necessary here. The filing period begins earlier and lasts longer than the old filing period and (as the receipts are not vehicle-specific) it will take less time for carriers to route receipts to their vehicles than it did to route bingo cards. We believe it will be sufficient to insert language

in § 1023.5, governing receipts, requiring States to issue the receipts within 30 days. We expect that, in the event States do not send out their receipts in a timely manner, they will postpone enforcement and notify the other participating States of the delay.

In our ANPR decision we indicated that we read § 11506(c)(2)(A) to mean that the registration State may choose not to require the filing of evidence of certificates and permits and the names of process agents. On reexamining the language of the statute, we concluded in our NPR decision that a registration State does not appear to have been given the discretion as to the items it can require a carrier to file. We explained that, as each registration State must serve as an information collecting agent for other States, it would be unfair to allow registration States to choose the information they will collect and allowing them to do so would promote inconsistencies contrary to the desired end of uniformity. We noted that the burdens our rules would impose are minimal, as for the most part, carriers will simply file with the States copies of the forms they file with the Commission. The Owner-Operator Independent Drivers Association, Inc. (OOIDA) argues that carriers should not be required to file copies at all. We previously have found that the law requires such a filing. The NCSTS objects to the Commission's proposed provisions allowing carriers to file summaries of authorities with the permission of their registration States. This commentor contends that the proposed language allows individual States to have unique or differing requirements, hampering uniformity to the detriment of carriers and States. We do not see how the provision could have the adverse effect NCSTS suggests, and, moreover, we do not see a legitimate link between the more detailed information the NCSTS would have carriers file and the essential purposes of the registration program. Accordingly, we decline to modify our proposal in this area.

Insurance. The proposed rules require the carrier to file a copy of its proof of public liability security with the registration State. A number of commentors assert that it is the insurer, not the carrier, that typically files the proof with the States and should continue to do so under the new rules. The NAII points out that, for security reasons, some insurers prefer to submit the financial responsibility certificates directly. Northland avers that placing control of insurance documents in the hands of carriers lends too much opportunity for mishandling and abuse. The points are well taken; however, as the Commission does not have jurisdiction over the insurers, we cannot order them to file anything with the States. To accomplish the desired end, we will insert language in the regulations indicating that a carrier must file or "cause to be filed" its evidence of insurance. We expect that, pursuant to agreements between carriers and their insurers, it generally will be the insurers that will make appropriate insurance filings with registration States.

A number of the commenting State interests are concerned that the Commission's proposed regulations would allow a carrier to file a copy of its proof of public liability security. These commentors want to receive original certificates of insurance from insurers. The NCSTS argues that, without original certificates, States lack reliable documentation. A copy, it asserts, is not binding on the insurer. In Minnesota's view, a copy gives no assurance that the carrier actually has liability coverage. We disagree. The fact that a State receives a true copy of a certificate of insurance, rather than an original, makes no practical difference. Typically, insurance companies create carbon copies while they are creating originals, and the States receive true copies of the documents that insurers file with the Commission as required by our insurance regulations at 49 C.F.R. Part 1043. Significantly, the commentors' arguments in this area ignore that, under the registration plan, carriers simply are to show that they are in compliance with the Commission's insurance

requirements. As Travelers points out, the insurance filing with the States is for information purposes only; there will be a properly completed certification at the Commission.

The NCSTS is concerned with what it perceives as inconsistency among some of the insurance forms referenced in our insurance regulations. The NCSTS indicates that it is satisfied with the content of the forms BMC 91 and BMC 91X certificates of insurance, but that the endorsement form MCS 90 cross-referenced in the BMC forms appears to limit the liability of the insurer to the amount of coverage specified in the blanks of the form MCS 90, whether those limits are those required by Federal law or not. (See 49 C.F.R. § 1043.7(a).) We note that this concern goes well beyond the scope of this proceeding, but in any event there is no basis for NCSTS' concern. The form MCS 90 is a jointly approved ICC-DOT endorsement that DOT requires carriers to keep at their principal place of business. Because DOT does not receive certificates of insurance, only the endorsements, insurers must indicate limits provided on the MCS 90 forms they file with DOT. This is done to meet DOT's proof of insurance requirements and has no bearing on this Commission's requirements. Carriers do not file the MCS 90 forms with this Commission, and coverage limits set forth therein do not affect the coverage limits in the BMC-series forms filed with us.

Some commentors request the Commission to recognize specifically that insurance coverage is continuous until canceled and to eliminate from our proposed regulations requirements for annual insurance filings. We are aware that the motor carriers' insurance coverage is continuous until canceled; our insurance regulations reflect this fact. (See 49 C.F.R. § 1043.7(a)(6).) Our proposed regulations do not require annual insurance filings, only a simple certification or statement by the carrier to the registration State that its insurance remains in effect. This is analogous to the

certification an individual makes each year when renewing a vehicle registration.

The NCSTS and individual States including Colorado, Missouri, and Wisconsin believe it is important that States receive notices of insurance cancellations. We see no problem with the request, and we will modify our proposed rules by inserting a provision requiring carriers to cause cancellation notices (as well as notices of replacement) to be timely filed with their registration State. We remind the commentors, however, that the 30-day cancellation notice period specified in 49 C.F.R. § 1043.7(d) runs from the date notice is received by the Commission, not the registration State.

Filing Fees. Regarding the calculation of filing fees, the Commission proposed that carriers declare the numbers of vehicles that they intend to operate in each participating State during the next year. However, we invited comments on a system under which carriers would report the number of vehicles operated in each participating State during the preceding year. AMC/HGCB, ATA, ITCC, and some carriers commented in favor of standards requiring the calculation of fees on a historical basis. The ATA asserts that the IRP uses historical operations as a basis for apportioning fleet registration fees and that the procedure has proven itself over 20 years. Estimating future operations, it asserts, would require a carrier to make continual adjustments during a year or simply to overpay to assure compliance and then later to apply for refunds. The ITCC avers that historical operations are documented, reconcilable with other plans, and offer a defined basis for payments, collections, and audits. The NCSTS, on the other hand, agrees with the proposed rule requiring reporting and submitting fees for the number of vehicles a carrier intends to operate during the next registration year.

As we indicated in our NPR decision, the "intends to operate" standard has been successfully used in connection

with the bingo stamp program for many years. No one in the comments has demonstrated any significant problems with the approach. As the approach has apparently worked well, and as Congress did not express any intent to change it in ISTEA, we are not inclined to shift gears at this point. With the flexible receipt system we have adopted, adding vehicles should not be a problem.

Registration Receipts—Specific Provisions. Commentors among the State interests, primarily the NCSTS, offer a number of suggestions for modifying our proposed rules. Many of the suggestions have merit.

First, regarding the content of receipts, the NCSTS requests the Commission to delete proposed language concerning numbers of vehicles declared and fees paid with respect to each State. It asserts that showing the amount of fees paid does not assist in roadside enforcement. Fee information and numbers of vehicles will be recorded at the time the application is filed. This commentor proposes that receipts simply identify the carrier and specify the States for which fees have been paid. This suggestion appears reasonable and will satisfy the requirements of the law. Accordingly, we will adopt a provision consistent with that recommendation.

We proposed that registration States issue unified receipts and official copies containing the information pertaining to all annual and/or supplemental registrations covering a particular registration year. The NCSTS requests that we delete the proposed provision. It asserts that the burden on States and carriers to collect superseded receipts would be substantial and that, conversely, the burden on carriers to attach supplemental receipts to prior receipts would be minimal. In view of the fact that carriers will be making copies of all receipts, we see merit in this position and will delete the provision.

The NCSTS would have us delete our proposed provisions regarding time frames for the issuance of receipts. As we indicated above in our discussion of registration requirements, we will retain provisions requiring the timely issuance of receipts issued pursuant to filings made during the annual registration period. We also will retain a provision requiring all other receipts to be issued by the 30th day following the date of filing of a fully acceptable supplemental registration application. These requirements are reasonable and consistent with both the registration requirements of §1023.4 and the provisions regarding temporary permits, discussed immediately below.

The NCSTS proposes that we adopt a suggested expedited procedure to govern situations in which carriers have an urgent need to add equipment or States of travel. We see no problem with the essence of the request, and we will adopt a rewritten version of the suggested new subsection.

The NCSTS objects to the Commission's proposed provision permitting carriers to transfer copies of receipts between their motor vehicles. It asserts that a carrier should not be permitted to transfer a receipt from a vehicle for which fees have been paid to one for which they have not, unless the transfer is from a vehicle taken out of service to its replacement vehicle. We will delete this provision now that carriers will be making copies of receipts, and all receipts would be identical.

The NCSTS also objects to our proposed provision which, in essence, requires a registration State to replace a lost or stolen receipt or official copy without charge. In view of the fact that carriers will be making copies of all receipts, we will delete this provision.

Finally, the AIA objects to the proposed title of § 1023.5, "insurance receipts." It contends that the receipts evidence payment of a registration fee, not payment for insurance. We

agree and have changed the title of § 1023.5 to "registration receipts."

Registration State Accounting. We proposed regulations governing recordkeeping involved in allocating and distributing fees collected by participating States. The NCSTS finds the provisions acceptable. Kansas and Wisconsin are the only other commentors to address the provisions of the section. Generally, they recommend some minor modifications that we deem unnecessary or unacceptable. Wisconsin would have the Commission adopt regulations governing carriers' retention and furnishing of records. We believed it necessary and appropriate to promulgate provisions governing the manner in which participating States would account to each other under the new program. We did not, and do not, believe that it would be necessary or appropriate to adopt regulations governing carrier records. To the extent that current Commission regulations in this area are inadequate, States may adopt appropriate administrative procedures, so long as they do not unreasonably burden interstate commerce.

State penalties and sanctions. Only the NCSTS and the ATA comment on the proposed § 1023.7, which declares violations of the regulations unlawful and allows States to impose criminal penalties or civil sanctions on violators. The NCSTS finds the language of the provision acceptable. On the other hand, the ATA contends that there is nothing in the statute authorizing the delegation of enforcement of the regulations to the States.

We find no merit in the ATA's contention, and we dismiss it. It is true that § 11506 is silent in this matter, but so was the predecessor § 11506. The proposed regulatory provision simply mirrors its predecessor provision, regarding which we are unaware of any complaints. The States do not need legislation at the Federal level to enable them to exercise their proper police powers in this area. As the States will be

running a registration program, it appears reasonable that they be able to adopt regulations and statutory provisions covering the program, so long as there is no conflict with Federal law or regulations.

B. Issues and matters not specifically related to proposed regulations.

Insurer qualification. In our NPR decision, we addressed and dismissed arguments that individual participating States, or even States acting in their capacities as registration States, have the authority to require that a carrier operating within their jurisdictions be insured by a company licensed or admitted to do business in such jurisdictions. We stated, at page 12 of our decision,

Under 49 C.F.R. § 1043.8, the Commission will accept a certificate of insurance or surety bond issued by an insurance or surety company authorized to do business (licensed or admitted) in any State. The Commission requires a carrier to comply with the provisions of Part 1043 before it will issue the carrier a certificate or permit. Under ISTEA, a carrier must file evidence of its certificate and/or permit and proof of required insurance or qualification as a self-insurer. Clearly, the law refers to certificates and permits issued by this Commission. Concomitantly, the law refers to proof of the type of security that this Commission requires before it will issue a certificate or permit. Thus, under ISTEA and our proposed regulations, a carrier may file proof of insurance or surety issued by an insurance or surety company authorized to do business in any State.

DOT and NAWGA endorse the Commission's conclusions in this area, as does insurer Erie Insurance Exchange (Erie). Erie is concerned by several States' contrary positions, and it advocates placing language directly in the regulations to lay to rest any doubt that a motor carrier may choose to be insured with any licensed insurance company.

Several States still contest the matter. Alabama argues that States have a legitimate interest in verifying that insurers that underwrite liability coverage for motor carriers have adequate financial resources to satisfy claims arising from those carriers' operations. Alabama contends that Congress never intended for ISTEA to circumvent the ability of each State electing to participate to impose its insurer or surety eligibility requirements. In its view, each participating State should have the latitude to reject a carrier's registration if the State determines that the carrier's insurer is not authorized to conduct insurance business in its jurisdiction. Alabama cites §1023.55 of the bingo regulations, which states that "the provisions of this subpart shall not be construed in any way to affect the qualifications of an insurer or surety as prescribed by State law." Allowing each participating State to continue to enforce its insurer requirements, Alabama asserts, would not result in any new burdens on interstate commerce.

The bingo regulations were prepared and certified by NARUC, and, under old § 11506, the Commission had no option but to prescribe NARUC's regulations. A conflict between the bingo regulations and our insurance regulations arose, despite the fact that old § 11506(e) specifically stated that, "this section does not * * * authorize standards in conflict with regulations of the Commission." We are aware that carriers and their insurers avoided the conflict, and at least nominally complied with State insurance requirements, by means of schemes using fronting companies and reinsurance plans.

Stratagems are no longer required. Commission regulations are clear, as is ISTEA's mandate for a simple, single—State registration system. Once a carrier has met the Commission's requirements for authority to operate in interstate commerce, it must be allowed to operate. As our regulations which require only that insurers be licensed in some State, are clear regarding this matter, we do not see any need to promulgate regulations addressing this point.

California points out that States' standards for licensing and admitting insurance and surety companies are not necessarily comparable. It fears that insurers and sureties can seek out less demanding States. It asserts that more lenient State standards translate into lower premiums for carriers. It concludes that potential claimants may not be adequately protected if the least expensive insurance also is the least funded. In these premises, California argues that it would be reasonable for the Commission to spell out the basic standards we apply to insurers and sureties. It contends that we should establish and publish capitalization and liquid asset requirements for insurance and surety companies.

The Commission formerly maintained financial resources standards; however, in *Insurance Procedures and Minimum Amounts of Liability*, 133 M.C.C. 273 (1983), we determined that the financial resources standard no longer served a useful purpose and unnecessarily duplicated State regulation. The question of financial requirements was again raised in *Revision of Regulations—Insurance & Surety Companies*, 7 I.C.C.2d 589 (1991) (Revision of Regulations). We queried whether we "should return to our pre-1983 approach of reviewing the financial soundness of each insurer" (*Revision of Regulations*, 7 I.C.C.2d at 597.) and discussed whether to reestablish a program of independently reviewing the financial soundness of insurance companies. However, we determined that, "[w]e continue to believe such a program is not necessarily in the public interest * * *." (*Id.*, at 611.) The Commission affirmed its continuing opinion that such reviews would be "unnecessarily duplicative of long-standing state, procedures." (*Id.*)

We advise California, and those States that share its concern, that, should they believe the insurer qualification standards of fellow States to be too lenient, they can request those States to change those standards. But we see no basis for changing our basic insurance regulations, which are not directly at issue in this proceeding.

Insurance industry concerns. AIA is concerned that language in our NPR decision suggests that insurers still could be expected to provide information to States other than pertinent registration States. AIA believes that, under ISTEA, no State other than a registration State can require proof of insurance or of cancellation, either directly or indirectly. Similarly, Erie is concerned that the proposed regulations may suggest to some States that, so long as they are not participating States, they may impose insurance requirements in excess of those permitted by the regulations. Erie fears that some States might believe that they can avoid ISTEA's Federal preemption of their insurance requirements simply by declining to participate in the program. AIA and Erie request that the Commission modify its proposed regulations to specify that they govern the activities of all States, participating and non-participating States alike. On the other hand, Oregon, which is not eligible to participate in the program, complains that there is nothing in the proposed rules that provides for Oregon or other non-participating States to receive notice that a carrier has insurance coverage that meets Commission prescribed limits or that an insurer intends to cancel insurance coverage. Oregon wants the Commission to amend the proposed rules so as to require filings with non-participating States.

The insurance industry commentors are unduly concerned. We advise them and the public that the States' ability to require anything of Commission- regulated motor carriers is circumscribed by ISTEA, our existing insurance regulations, and the new registration regulations we are issuing here. Only States that are eligible to participate, and that in fact participate, may request insurance filings, and the regulations describe what the States may request and when they may request it. Any insurance-related requirements of interstate carriers by non-participating States (as well as any demands by participating States) beyond those permitted by our regulations constitute impermissible burdens on interstate

commerce under the law. This would include attempts by the State to impose fees for the registration or filing of evidence of insurance, either directly upon the carriers or indirectly upon insurance companies or middlemen such as custom brokers where reimbursement is obtained from the carriers. We believe that the proposed regulations are sufficiently clear in this regard, and we see no reason to modify them. States such as Oregon that want insurance information can contact the Commission. Our new automated telephone response system facilitates their obtaining the information they require.

AIA and Travelers are concerned with burdens imposed by intrastate filing requirements. In particular, they complain of having to file two different financial responsibility certifications for the same motor carrier with the same State. They ask the Commission to declare that a State's insurance filing requirement for intrastate operations by an interstate carrier cannot be more restrictive than its filing requirement for interstate operations by the same carrier.

We have no jurisdiction to regulate filings for intrastate operations. If such filing requirements are thought to pose a significant problem warranting Federal action, legislation would be necessary to give the Commission appropriate preemptive authority.

AIA, Northland, and Travelers point out that there are thousands of outstanding Form E insurance filings made under the bingo rules. (See Subpart E and the appendix to the predecessor Part 1023.) They query whether they will have to cancel the filings individually, or whether the Commission will in some manner authorize a blanket cancellation. AIA suggests that, to reduce potential confusion, costs, and litigation, we adopt provisions rendering all existing Form Es or other certificates of insurance null and void, either as of the time the registration States receive new proof of insurance filings, or as of the end of the day on December 31, 1993.

Form E, as well as all the other insurance-related forms set forth in the bingo regulations, drew life from those regulations. Beginning with the effective date of the new regulations, the old bingo regulations will cease to exist, and, necessarily, there will be no regulatory basis for the old forms. Therefore, considering that the new registration year will begin January 1, 1994, we hereby declare that the forms described in the superseded rules are canceled effective 12:01 a.m. January 1, 1994. (We recognize that this rulemaking has no effect over the forms States may require for intrastate filings, but States may no longer use such forms for interstate registration if they are inconsistent with the requirements of this rule.)

AIA deems it critical that our final rules declare that any insurance information flowing from the registration State to the other participating States is not doing so by legal mandate or rule, is purely advisory, and has no legal significance. We discussed this matter at pages 12-13 of our NPR decision. We declined to include rules concerning insurer liability, and we again decline to do so. As we previously stated, there is nothing in the statute or the legislative history that would lead us to believe that we should promulgate regulations covering an information exchange system. There is likewise nothing to suggest that we should promulgate regulations here concerning insurers' liability.

London Insurance and Reinsurance Market Association requests the Commission to find that insurance coverage by a surplus lines insurer listed on the Non-Admitted Insurers' Information Office "white list" constitutes appropriate evidence of financial responsibility for motor carriers operating in any State. We fully examined this matter, which is not at issue in this proceeding, in Revision of Regulations, supra. We determined there that alien insurance companies may not file certificates of insurance with the Commission. We reiterate that, if a company wants to act as an insurer or

surety for a regulated motor carrier, it must become fully admitted in a State of the United States, and perhaps enter one or more other States as an excess/surplus underwriter. See 49 C.F.R. §1043.8.

Exempt and Private Carriers. We previously addressed the matter of whether the statute does, and our regulations should, cover private carriers and carriers conducting exempt operations. At page 14 of our NPR decision, we noted that " § 11506, by its own terms, clearly concerns only carriers providing transportation subject to this Commission's regulatory jurisdiction." We added that "the law neither authorizes nor precludes registration programs covering unregulated carriers." The OOIDA requests us to reconsider our position and to make the regulations applicable to exempt and private carriers. It says that many States place on exempt carriers requirements identical to those they place on regulated carriers. Michigan supports the inclusion of exempt carriers in the program. The alternative, it argues, is a dual system of registration. Louisiana contends that the registration receipts should designate a carrier as regulated or exempt. In its view, even an exempt carrier should have a receipt designating its status; otherwise States will have difficulty discerning which carriers are regulated and which are not. Iowa, on the other hand, argues that the rules should make it clear that a Commission-regulated carrier does not need to register in individual States to haul exempt commodities if it already is registered to haul regulated commodities. DOT requests that the Commission declare that the final rules do not extend to private and exempt interstate carriers. It emphasizes that ISTEA is intended to reduce burdens imposed by the bingo program and that the bingo program never applied to private or exempt carriers.

We reiterate our comments in this matter. By definition, we cannot adopt regulations governing the activities of entities that are not subject to our regulatory jurisdiction. DOT may

be concerned with our statement that, "whether the States, in fact, impose registration fees on private or exempt carriers is an issue beyond the purview of this proceeding." Clearly, States cannot register private or exempt carriers under the ISTEA or under the rules we are adopting here, as the law and rules apply only to regulated interstate carriers.

Forms. In our decision and NPR, we requested parties to submit suggested forms for annual and supplemental registration applications and for receipts. The NCSTS and a single motor carrier submitted suggested forms. We will adopt the form proposed by the NCSTS, with minor modifications. (See Attachment to Appendix B.) Notably, the NCSTS's proposed registration form fails to include any provision relative to the filing of a copy of proof of public liability security submitted to and accepted by the Commission. The matter is at the heart of the registration plan, and an appropriate provision must be included in the registration form. We note that the NCSTS's proposed registration form contains a listing of the States it apparently believes are eligible to participate in the program. As the Commission has no verification that these States are, in fact, the States that are eligible to participate, we did not include this list on the form.

Commission Role. The ATA asserts that Congress delegated to the Commission the responsibility for regulating the new program and that, therefore, the rules should establish a procedure the Commission will follow to assure that States are in compliance. Travelers believes that the Commission has the duty to notify every interstate carrier of the new regulations and to explain the regulations to them. Several commentors among the States believe that the Commission should publish information regarding State fees and/or carrier registration requirements.

We discussed our role at page 16 of our NPR decision. We have been charged with the task of adopting regulations to

establish a base State insurance registration program. The registration system that the amended law contemplates is intended to function without Commission supervision. Nevertheless, we emphasize as we did before, that we will remain available to assist in developing the program. We will entertain petitions and amend the regulations when and as necessary to improve the single-State registration program. However, we do not contemplate establishing a procedure to monitor State compliance with the program. Should compliance problems develop, aggrieved persons can seek redress through the courts or by petition with the Commission, as may be appropriate.

ENVIRONMENTAL AND ENERGY CONSIDERATIONS

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

REGULATORY FLEXIBILITY CERTIFICATION

Pursuant to 5 U.S.C. § 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose of our action is to reduce a regulatory burden. The economic impact on small entities, if any, will be to reduce administrative costs and is not likely to be significant within the meaning of the Regulatory Flexibility Act.

INDEX OF TERMS

49 C.F.R. Part 1023 Insurance, Motor carriers, Surety bonds.
49 C.F.R. Part 1162 Administrative practice and procedure, Motor Carriers.

COMMISSIONER PHILLIPS, commenting:

By our decision today, we are adopting final rules implementing the single State registration system mandated by Congress in the Intermodal Surface Transportation

Efficiency Act of 1991 (Public Law No. 102-240) (ISTEA). Since instituting our rulemaking proceeding in May 1992 to formulate regulations in compliance with ISTEA, we have been diligent in our implementation of Congress' mandate to replaced the old "bingo stamp" program with a simplified motor carrier registration system that will be less burdensome to the motor carrier industry while maintaining State revenues from the program. I believe we have been successful in our endeavor, and have resolved the numerous issues raised during this proceeding in a manner consistent with the direction we received from Congress in ISTEA.

Throughout the proceeding, one issue that was particularly controversial was whether the States or the carriers would be responsible for making copies of the registration receipt. I am sympathetic to the States' concerns about the need to ensure compliance by carriers with the new system, and I understand their desire to facilitate their enforcement efforts. Nevertheless, in reviewing the limited legislative history on the "bingo stamp" provisions in ISTEA, Congress did not appear to express any particular concern about the need to assist State enforcement efforts. To the contrary, the Conference Report states that the new system is to be instituted by the Commission "in such a manner as to eliminate as much of the paperwork and other compliance burdens as possible." Further the statutory language references "a receipt" to be given to the carrier by the base State, with no mention being made in either the statute or the report as to the question of who is responsible for making the copies of the receipt. Given this background, any potential benefit that might be derived from requiring that the States furnish all official copies of registration receipts to carriers, in my view, is outweighed by Congress' direction that we eliminate as many compliance burdens as possible. I would note, however, that the approach we have adopted in our final rule today will be of some assistance to State enforcement efforts in that the receipt issued by the base State must

identify the carrier and specify the States for which fees have been paid. While not as all-encompassing as the alternative preferred by the States, I believe our approach strikes a reasonable balance and is consistent with the guidance we have received from Congress in this area.

CHAIRMAN McDONALD, dissenting in part and commenting:

I disagree with the majority's conclusion on the issue of whether States or motor carriers should be responsible for producing copies of the registration fee receipts. I would have preferred that the States provide to each carrier the appropriate number of copies of the non-vehicle-specific receipt.

Nonetheless, I am committed to the successful implementation of the Single State Insurance Registration program. I stand ready to assist the participants in the future, and I trust the Commission will seriously entertain petitions if problems develop either in the program's start-up period or as it evolves in subsequent years.

VICE CHAIRMAN SIMMONS, dissenting in part:

I strongly disagree with the majority's rationale on the issue of whether the States or motor carriers should be responsible for producing official copies of the registration fee receipts. I would have required that only registration States issue all necessary receipts.

More than twenty States have filed comments unanimously supporting the proposal that only registration States issue all the receipts carriers need. They are rightfully concerned that allowing carriers to make copies increases the chance for fraud and abuse of the process. The insurance industry shares the States' concerns. After examining these comments, the Commission's own staff has reversed its previous position, and now concludes that the States' fears for abuse have merit.

Staff now recommends that only the States issue all official copies in order to reduce the chances for misconduct. The majority, I feel, has misconstrued Congressional intent on this issue.

I would have deferred to the experts in this matter, the State regulatory and enforcement agencies. As a result of our action, it is the States that will have to expend limited resources to audit and ferret out those individual carriers who do engage in fraud and abuse of the process. I believe that it is the height of arrogance for this Commission to impose an unwanted rule and leave the burden of enforcement on States.

COMMISSIONER PHILBIN, joined by COMMISSIONER WALDEN, dissenting in part:

I agree with the majority decision to adopt a test denominated as the "principal place of business" for the selection of a base registration state, but I disagree with the majority decision to define that term as the "*** single location that serves as a motor carriers' headquarters ***." This definition is a new invention which totally ignores the ambiguity inherent in the term "headquarters." Without explanation the majority not only rejects a more understandable and more legally settled definition such as that for the "base jurisdiction" of the International Registration Plan (IRP), but totally ignores the problems created by the term "principal place of business" which even a cursory knowledge of the litigation created by this term in the Federal courts would provide. I agree with Commissioner Walden's remarks delineating the advantages of the IRP definition, whether titled "principal place of business" or "base jurisdiction" or anything else the majority desires, since the devils reside in the definition, not in the title. Requiring a motor carrier to register in the state where it maintains its "principal place of business," if that state is a participating state, a fortiori presumes that the motor carrier possesses an identifiable "headquarters" in a "single location." Federal

legal precedents inform us that modern business practices do not lend themselves to such simplistic presumptions, since the determination of the principal place of business "*** is in each case a question of fact and the court must take into account such factors as the character of the corporation, its purposes, the kind of business in which it is engaged and the situs of its operations." *American Foundation, Inc. v. Mountain Lake Corporation*, 454 F.2d 200, 201 (5th Circ.1972).

Is the "headquarters" to be construed as the "home office"? If so, the Federal courts have devised two "home office" definitions: (1) the executive offices at which general policy decisions are made or (2) the place where day-to-day control of the business is exercised. Id.

Another view rejects the "home office" tests to determine the situs of the "principal place of business" and holds that the situs is where the corporation carries on the bulk of its activity even though the "home office" or headquarters in either of the senses described above may be elsewhere. Id. Federal courts have used varied other tests to determine the situs of the principal place of business. *Industrial Tectonics, Inc. v. Aero Alloy, et al.*, 912 F.2d 1090,1092 (9th Cir.1990). One is the "nerve center test" which defines a corporation's principal place of business as the location where its executive and administrative functions are performed. *Id.* A second line of cases utilizes the "place of operations test" to locate the principal place of business in the state which contains a "substantial predominance of corporate operations" [citation omitted] Id. at 93. Since each determination is a question of fact, judicial interpretations can become even more convoluted. *Continental Coal Corp., et al. v. Roszelle Bros., et al.*, 242 F. 243, 246 (6th Cir.1917). One series of cases has held that where a corporation conducts substantially all of its operations in one state and its headquarters is located in another state, the state of operations is the principal place of

business. *Industrial Tectonics*, supra at 1092. Another series of cases holds that where a corporation conducts business in many states, and does not conduct a predominance of its business in any single state, the state where the corporate headquarters is located is the principal place of business creating the necessity of determining which of the two "home office" tests apply. *Id.* See also *The American Foundation*, supra at 201; *Riggs v. Island Creek Coal Company*, 542 F.2d 339 (6th Cir.1976). All of this uncertainty can be avoided by adopting the settled IRP definition. The test here adopted by the majority provides innumerable opportunities for carriers, states and other entities with legal standing to frivolously test the Commission's new definition when they perceive it to be in their best interests.

The IRP definition is not only much more flexible but is easier to understand and apply. A carrier would be required to select a state (1) in which it has an established place of business, (2) where mileage is accrued by the carrier, and (3) where its operational records can be made available. The fact that no particular state is mandated, and that a carrier can select from a number of "correct" states, eliminates the certain controversy that will ensue from attempts to interpret the majority's definition. And, if in fact there is an unexpected or unwanted disadvantage to using the IRP definition, then, as Commissioner Walden suggests, the Commission can invite those aggrieved to petition for a modification of these rules.

These rules are in furtherance of Federal law, we should look to Federal case law to define terms such as "principal place of business" and should not reinvent a wheel which almost certainly will not roll smoothly. Federal case law makes clear that uncertainty will result from the use of this term unless it is defined similarly to the IRP's "base jurisdiction." The Commission should heed the guidance given by the Federal Courts on this issue and not traipse off on another frolic of its own.

COMMISSIONER WALDEN, dissenting in part:

I disagree with the majoritys' decision with respect to a carrier's selection of a registration State. Section 1023.3(a), as finally adopted, requires a carrier to select the State in which it has its "principal place of business" unless that State is not a participating State, in which case the carrier must select the State in which it will operate the largest number of vehicles over the next year. The Commission adopts this provision instead of the "base jurisdiction" definition included in the International Registration Plan (IRP), which was recommended by ATA.

Under the IRP definition, a carrier would be allowed to select a State in which it has an established place of business, where mileage is accrued by the carrier, and where official records can be made available. The IRP once defined the base jurisdiction as the carrier's principal place of business, but ATA states this definition was changed after experience showed it to be inflexible. The industry has much experience under the IRP provision; it is easy to understand and follow; and it would avoid fine legal disputes over what constitutes a carrier's "principal place of business" and over the accuracy of a carrier's projection of the State in which the largest number of vehicles would operate in the future. The majority decision asserts that "principal place of business is a certain location," but this is not always so. The Commission's definition of the "principal place of business" in §1023.1(d) may contemplate only one headquarters per carrier, but the concept of "headquarters" is not fixed and becoming even less in today's world of business.

So why does the Commission rejects the IRP definition and risk these problems? Because it fears that "free choice" will cause some States to bear "disproportionate burdens." Because the single-state system is not yet operational, of course, this fear is unsupported. In fact, neither the IRP definition nor the final rule provision eliminates the risk of

base state shopping. Without conceding that base state shopping must be discouraged, I do not believe the Commission should concern itself with hypothetical concerns that may well prove baseless. I would respond to this concern in the same way the Commission responds in this decision to a similar fear of "disproportionate burdens" expressed by the State of North Dakota (Canadian carriers may select northern border states):

We advise North Dakota and similarly situated States that should such a problem occur, they can petition for modification of the rules, and we can address the problem based on a record fully developed with regard to the issue. Because I would adopt the IRP base jurisdiction definition for selection of registration State, I dissent from that portion of the Commission's decision.

It is ordered:

1. The regulations at 49 C.F.R. Parts 1023 and 1162, governing registration by interstate motor carriers with States, are amended in the manner set forth in Appendix B to the decision.

2. The forms described in the superseded rules are canceled effective 12:01 a.m. January 1, 1994.

3. Notice of this decision will be published in the Federal Register and the ICC Register on May 18, 1993.

4. This decision will take effect on May 18, 1993.

5. This decision is issued under the authority of 49 U.S.C. § § 10321 and 11506 and 5 U.S.C. §553.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Commissioner Phillips commented with a separate expression. Chairman McDonald dissented in part and commented with a separate expression. Vice Chairman

Simmons dissented in part with a separate expression. Commissioner Philbin, joined by Commissioner Walden, dissented in part with a separate expression. Commissioner Walden dissented in part with a separate expression.

APPENDIX A

LIST OF COMMENTORS

Motor Carrier Interests
American Bus Association
American Movers Conference and Household Goods Carriers' Bureau
American Trucking Associations
Atlas Van Lines
Gray Motor Line, Inc.
Interstate Truckload Carriers Conference
North American Van Lines, Inc.
Owner-Operator Independent Drivers Association, Inc.
Regular Common Carrier Conference
Yellow Freight System, Inc.

State Interests
National Association of Regulatory Utility Commissioners
National Conference of State Transportation Specialists
Alabama Public Service Commission
Arkansas State Highway Commission
Public Utilities Commission of the State of California
Colorado Public Utilities Commission
Georgia Public Service Commission
Idaho Public Utilities Commission
Illinois Commerce Commission
Iowa Department of Transportation
Kansas Corporation Commission
Kentucky Transportation Cabinet
Louisiana Public Service Commission
Maine Secretary of State, Bureau of Motor Vehicles
Michigan Public Service Commission
Minnesota Department of Transportation
Missouri Division of Transportation
Nebraska Public Service Commission

New Mexico State Corporation Commission
New York Department of Transportation
North Dakota Department of Transportation
Public Utilities Commission of Ohio
Oklahoma Corporation Commission
Oregon Public Utility Commission
Public Service Commission of South Carolina
Tennessee Public Service Commission
Railroad Commission of Texas
Virginia State Corporation Commission
Washington Utilities and Transportation Commission
Wisconsin Department of Transportation

Insurer Interests
American Insurance Association
Erie Insurance Exchange
Hawkeye-Security Insurance Company and United Security Insurance Company
London Insurance and Reinsurance Market Association and certain member companies of the Institute of London Underwriters
National Association of Independent Insurers
Northland Insurance Companies
The Travelers Insurance Company

Shipper Interests
National-American Wholesale Grocers' Association and International Foodservice Distributors Association
National Private Truck Council

Federal Government
United States Department of Transportation

Other Commentors
Joy B. Fitzgerald
Halsey Traffic Services

APPENDIX B

Final Amendments to Title 49, Chapter X of the Code of Federal Regulations

1. Part 1023 is revised to read as follows:

PART 1023—STANDARDS FOR REGISTRATION WITH STATES

Sec.
1023.1 Definitions.
1023.2 Participation by States.
1023.3 Selection of registration State.
1023.4 Requirements for registration.
1023.5 Registration receipts.
1023.6 Registration State accounting.
1023.7 Violations unlawful; criminal penalties and civil sanctions.

Appendix A to Part 1023—UNIFORM APPLICATION FOR SINGLE STATE REGISTRATION FOR MOTOR CARRIERS OPERATING UNDER AUTHORITY ISSUED BY THE INTERSTATE COMMERCE COMMISSION.

AUTHORITY: 49 U.S.C. § § 10321 and 11506; 5 U.S.C. § 553.

§ 1023.1 Definitions.

(a) The Commission. The Interstate Commerce Commission.

(b) Motor carrier and carrier. A person authorized to engage in the transportation of passengers or property, as a common or contract carrier, in interstate or foreign commerce, under the provisions of 49 U.S.C. § § 10922, 10923, or 10928.

(c) Motor vehicle. A self-propelled or motor driven vehicle operated by a motor carrier in interstate or foreign commerce under authority issued by the Commission.

(d) Principal place of business. A single location that serves as a motor carrier's headquarters and where it maintains or can make available its operational records.

(e) State. A State of the United States or the District of Columbia.

§ 1023.2 Participation by States.

(a) A State is eligible to participate as a registration State and to receive fee revenue only if, as of January 1, 1991, it charged or collected a fee for a vehicle identification stamp or a number pursuant to the provisions of the predecessor to this Part.

(b) An eligible State that intends either to commence or to cease participating in the registration program must publish notice of its intention by the 1st day of July of the year preceding the registration year in which it will commence or cease participating.

§1023.3 Selection of registration State.

(a) Each motor carrier required to register and pay filing fees must select a single participating State as its registration State. The carrier must select the State in which it maintains its principal place of business, if such State is a participating State. A carrier that maintains its principal place of business outside of a participating State must select the State in which it will operate the largest number of motor vehicles during the next registration year. In the event a carrier will operate the same largest number of vehicles in more than one State, it must select one of those States.

(b) A carrier may not change its registration State unless it changes its principal place of business or its registration State ceases participating in the program, in which case the carrier must select a registration State for the next registration year under the standards of paragraph (a) of this section.

(c) A carrier must give notice of its selection to the State commission of its selected registration State, and, the State commission of its prior registration State, within 30 days after it has made its selection. If a carrier changes its principal place of business during the annual registration period specified in s 4(b)(2) of this part, the carrier may continue to use its prior registration State, if any, for the next registration year.

(d) A carrier must give notice of its selection to its insurer or insurers as soon as practicable after it has made its selection.

§ 1023.4 Requirements for registration.

(a) Except as provided in paragraph (c)(1) of this section with regard to a carrier operating under temporary authority, only a motor carrier holding a certificate or permit issued by the Commission under 49 U.S.C. §10922 or 10923 shall be required to register under these standards.

(b) A motor carrier operating in interstate or foreign commerce in one or more participating States under a certificate or permit issued by the Commission shall be required to register annually with a single registration State, and such registration shall be deemed to satisfy the registration requirements of all participating States.

(1) The registration year will be the calendar year.

(2) A carrier must file its annual registration application between the 1st day of August and the 30th day of

November of the year preceding the registration year. A carrier that intends to commence operating during the current registration year may register at any time, but it must do so before it commences operating.

(3) The registration application must be in the form appended to this Part and must contain the information and be accompanied by the fees specified in subsection (c) below. There will be no prorating of fees to account for partial year operations.

(4) A carrier that has changed its registration State since its last filing must identify the registration State with which it previously filed.

(c) A motor carrier must file, or cause to be filed, the following with its registration State:

(1) Copies of its certificates and/or permits. A carrier must supplement its filing by submitting copies of any new operating authorities as they are issued. Once a carrier has submitted copies of its authorities, it may thereafter satisfy the filing requirement by certifying that the copies are on file. A carrier may, with the permission of its registration State, submit a summary of its operating authorities in lieu of copies. A carrier granted emergency temporary authority or temporary authority having a duration of 120 days or less is not required to file evidence of such authority, but it must otherwise comply with the requirements of this section;

(2) A copy of its proof of public liability security submitted to and accepted by the Commission under 49 C.F.R. Part 1043 or a copy of an order of the Commission approving a public liability self-insurance application or other public liability security or agreement under the provisions of that Part. A carrier must supplement its filings as necessary to ensure that current information is on file. Once a carrier has submitted, or

caused to be submitted, a copy of its proof or order of the Commission, it may thereafter satisfy the filing requirement by certifying that it has done so and that its security, self-insurance, or agreement remains in effect;

(3) A copy of its designation of an agent or agents for service of process submitted to and accepted by the Commission under 49 C.F.R. Part 1044. A carrier must supplement its filings as necessary to ensure that current information is on file. Once a carrier has submitted a copy of its designation, it may thereafter satisfy the filing requirement by certifying that its designation is on file; and

(4) A fee for the filing of proof of insurance. In support of such fee, the carrier must submit the following information:

(i) The number of motor vehicles it intends to operate in each participating State during the next registration year;

(ii) The per vehicle fee each pertinent participating State charges, which fee must equal the fee, not to exceed $10, that such State collected or charged as of November 15, 1991;

(iii) The total fee due each participating State; and

(iv) The total of all fees specified in paragraph (c)(4)(iii) of this section.

(d) Consistent with its obligations under paragraph (c)(2) of this section, a carrier must cause to be timely filed with its registration State copies of any notices of cancellation or of any replacement certificates of insurance, surety bonds, or other security filed with the Commission under 49 CFR Part 1043.

(e) A carrier must make such supplemental filings at any time during the registration year as may be necessary to

specify additional vehicles and/or States of operation and to pay additional fees.

(f) A motor carrier must submit to its insurer or insurers a copy of the supporting information, including any supplemental information, filed with its registration State under paragraphs (c)(4) and (e) of this section.

(g) The charging or collection of any fee that is not in accordance with the fee system established above is deemed a burden on interstate commerce. This includes fees for the registration or filing of evidence of insurance whether assessed directly upon the carrier or indirectly upon the insurance provider or other party who seeks reimbursement from the carrier.

(h) To the extent any State registration requirement imposes obligations in excess of those specified in this Part, the requirement is an unreasonable burden on transportation within the Commission's jurisdiction under 49 U.S.C. §10521(a).

§1023.5 Registration receipts.

(a) On compliance by a motor carrier with the annual or supplemental registration requirements of §1023.4 of this Part, the registration State must issue the carrier a receipt reflecting that the carrier has filed the required proof of insurance and paid fees in accordance with the requirements of that section.

(1) The receipt must contain only information identifying the carrier and specifying the States for which fees were paid. Supplemental receipts need contain only information relating to their underlying supplemental registrations.

(b) Receipts issued pursuant to a filing made during the annual registration period specified in §1023.4(b)(2) of this

part must be issued within 30 days. All other receipts must be issued by the 30th day following the date of filing of a fully acceptable supplemental registration application. All receipts shall expire at midnight on the 31st day of December of the registration year for which they were issued.

(c) A carrier is permitted to operate its motor vehicles only in those participating States with respect to which it has paid appropriate fees.

(d) A motor carrier may make copies of receipts to the extent necessary to comply with the provisions of paragraph (e) below. However, it may not alter a receipt or a copy of a receipt.

(e) A motor carrier must maintain in each of its motor vehicles a copy(ies) of its receipt(s), indicating that it has filed the required proof of insurance and paid the required fees.

(f) The driver of a motor vehicle must present a copy(ies) of a receipt(s) for inspection by any authorized government personnel on reasonable demand.

(g) No registration State shall require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by a motor carrier.

§1023.6 Registration State accounting.

(a) A participating State must, on or before the last day of each month, allocate and remit to each other participating State the appropriate portion of the fee revenue registrants submitted during the preceding month. Each remittance must be accompanied by a supporting statement identifying registrants and specifying the number of motor vehicles for which each registrant submitted fees.

A participating State must submit a report of "no activity" to any other participating State for which it collected no fees during any month.

(b) A participating State must maintain records of fee revenue received from and remitted to each other participating State. Such records must specify the fees received from and remitted to each participating State with respect to each motor carrier registrant. A participating State must retain such records for a minimum of 3 years.

(c) A participating State must keep records pertaining to each of the motor carriers for which it acts as a registration State. The records must, at a minimum, include copies of annual and supplemental registration applications containing the information required by §1023.4(c). A registration State must retain all such records for a minimum of 3 years.

§1023.7 Violations unlawful; criminal penalties and civil sanctions.

Any violation of the provisions of these standards is unlawful. Nothing in these standards shall be construed to prevent a State from imposing criminal penalties or civil sanctions upon any person or organization violating any provision of them.

APPENDIX A TO PART 1023

UNIFORM APPLICATION FOR SINGLE STATE REGISTRATION FOR MOTOR CARRIERS OPERATING UNDER AUTHORITY ISSUED BY THE INTERSTATE COMMERCE COMMISSION

MOTOR CARRIER IDENTIFICATION NUMBERS:

ICC MC No.(s.)

US DOT No.

APPLICANT (Identical to name on ICC order):

NAME:

D/B/A

PRINCIPAL PLACE OF BUSINESS ADDRESS: [1]

Street

City_____ State _____ Zip_____

MAILING ADDRESS IF DIFFERENT FROM BUSINESS ADDRESS ABOVE:

Street

City_____ State _____ Zip_____

TYPE OF REGISTRATION:

[] New Carrier Registration—The motor carrier has not previously registered.

[1] A principal place of business is a single location that serves as a motor carrier's headquarters and where it maintains or can make available its operational records.

[ ] Annual Registration—The motor carrier is renewing its annual registration.

[ ] Supplemental Registration—The motor carrier is adding additional vehicles or States of travel after its annual registration.

[ ] New Registration State Selection—The motor carrier has changed its principal place of business or its prior registration State has left the registration program. The prior registration State was_____.

[ ] Additional States not registered in prior years. List _____

TYPE OF MOTOR CARRIER: (Check one)

[ ] Individual [ ] Partnership [ ] Corporation

If corporation, give State in which incorporated: _____

List names of partners or officers:

Name:_____ Title:_____
Name:_____ Title:_____
Name:_____ Title:_____

TYPE OF ICC REGISTERED AUTHORITY:

Permanent Certificate or Permit [ ] Temporary Authority (TA) [ ]

Emergency Temporary Authority (ETA) [ ]

ICC CERTIFICATE(S) OR PERMIT(S):

[ ] ICC Authority Order(s) attached for initial registration.

[ ] ICC Authority Order(s) attached for additional grants received.

[ ] No change from prior year registration.

PROOF OF PUBLIC LIABILITY SECURITY:

[ ] The applicant is filing, or causing to be filed, a copy of its proof of public liability security submitted to and accepted by the ICC under 49 C.F.R. Part 1043.

[ ] The applicant has filed, or caused to be filed, a copy of its proof of public liability security submitted to and accepted by the ICC under 49 C.F.R. Part 1043, and the security remains in effect.

ICC APPROVED SELF-INSURANCE OR OTHER SECURITIES:

[ ] ICC Insurance order attached for new carrier registration.

(Check one when completing for annual registration.)

[ ] The ICC Order approving the self-insurance plan or other security is still in full force and effect, and the carrier is in full compliance with all conditions imposed by the ICC Order.

[ ] The motor carrier is no longer approved under a self-insurance plan or other security, and the motor carrier will file, or cause to be filed, a copy of proof of public liability security with this application in the registration State.

HAZARDOUS MATERIALS: (Check one)

[ ] The applicant will not haul hazardous materials in any quantity.

[ ] The applicant will haul hazardous materials that require the following limits in accordance with Title 49 C.F.R. §1043.2:

(Check one)

[ ] Public Liability and Property Damage Insurance of $1 million.

[ ] Public Liability and Property Damage Insurance of $5 million.

PROCESS AGENTS:

[ ] ICC Form No. BOC-3 or blanket designation attached for new registration.

[ ] ICC Form No. BOC-3 or blanket designation attached reflecting changes of designation of process agents.

[ ] No change from prior year registration.

CERTIFICATION:

I, the undersigned, under penalty for false statement, certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the applicant. (Penalty provisions subject to the laws of the registration State.)

Name (Printed)

_____

Signature _____ Title

Telephone Number _____ Date

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. §10928

2. The authority citation for Part 1162 continues to read as follows:

Authority: 49 U.S.C. §§10321; 10928; 5 U.S.C. §559. §§1162.7 and 1162.8. [Removed]

3. Sections 1162.7 and 1162.8 are removed.

APPENDIX F

H.R. Conf. Rep. No. 404, 102nd Cong., 1ST Sess. 1991
1991 USCC&AN 1679
P.L. 102-240

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

HOUSE CONFERENCE REPORT NO. 102-404
[Excerpt]
SINGLE STATE REGISTRATION

CONFERENCE SUBSTITUTE

Section 405 repeals, effective January 1, 1994, the "bingo stamp" program authorized by Congress in 1965 through enactment of P.L. 89-170. The bingo stamp program allowed states to require interstate carriers to register their interstate operating authority with the state and charge a fee for doing so. The interstate carrier then received identification or "bingo" stamps from the state. Currently, 39 states require interstate carriers to carry such a stamp in the cab of each commercial motor vehicle operating within its borders.

The bingo stamp program authorized by P.L. 89-170 has been characterized as inefficient and has been an administrative burden on the trucking industry and the states. The trucking industry estimates that the program costs interstate carriers up to $250 million per year. Meanwhile, the 39 participating states collect only about $50 million under the program. The repeal of the bingo stamp program under Section 405 is intended to benefit the interstate carriers by eliminating unnecessary compliance burdens. It is the hope of the Conferees that, ultimately, consumers will also benefit from the cost savings associated with the elimination of the bingo program.

In order to preserve revenues for the states which had participated in the bingo program, Section 405 establishes a

new annual fee system enabling such states to continue to collect funds from interstate motor carriers. The fee is based upon the carrier's filing of proof of required liability insurance. Fee revenues under this system must be collected through a streamlined administrative process established by Section 406 known as the "single state" or "base state" registration system. Under the single state registration system, a carrier will pay its annual fees to a single state (its base state) and that state will distribute the collections to other participating states in which the carrier's vehicles operate. This system is to be instituted by the Interstate Commerce Commission, in consultation with the participating states and the trucking industry, in such a manner as to eliminate as much of the paperwork and other compliance burdens as possible. Section 405 specifies that the only evidence of payment or other identification a vehicle must carry under this system is a copy of the receipt given the carrier by the base state.

States which did not collect bingo stamp fees under the former program will not be able to collect the new fees authorized by Section 405. Additionally, states must participate in the base state program in order to collect the fees authorized by Section 405. States are expressly prohibited from charging a fee for the registration of a carrier's interstate operating authority or for any other filings which may be required under Section 405.

The new fee system is to be based upon the number of vehicles which a carrier operates in a state and the number of states in which that carrier operates. States will not be allowed to charge a greater fee under Section 405 than the fee they charged under the former program as of November 15, 1991. The fee cannot exceed $10 per vehicle under any circumstances.

The Conference version of Section 405 does not authorize any funds to be distributed to the states from the Highway Trust Fund.

APPENDIX G

49 U.S.C. 11506. Registration of motor carriers by a State

(a) DEFINITIONS.—In this section, the terms "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Interstate Commerce Commission to prove the lawfulness of transportation by motor carrier referred to in section 10521(a)(1) and (2) of this title.

(b) GENERAL RULE.—The requirement of a State that a motor carrier, providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and providing transportation in that State, register the certificate or permit issued to the carrier under section 10922 or 10923 of this title is not an unreasonable burden on transportation referred to in section 10521(a)(1) and (2) of this title when the registration is completed under standards of the Commission under subsection (c) of this section. When a State registration requirement imposes obligations in excess of the standards, the part in excess is an unreasonable burden.

(c) SINGLE STATE REGISTRATION SYSTEM.—

(1) IN GENERAL.—Not later than 18 months after the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, the Commission shall prescribe amendments to the standards existing as of such date of enactment. Such amendments shall implement a system under which–

(A) a motor carrier is required to register annually with only one State;

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) SPECIFIC REQUIREMENTS.—

(A) EVIDENCE OF CERTIFICATE; PROOF OF INSURANCE; PAYMENT OF FEES.—Under the amended standards implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier holding a certificate or permit issued under this subtitle

(i) to file and maintain evidence of such certificate or permit;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) RECEIPTS; FEE SYSTEM.—Such amended standards—

(i) shall require that the registration State issue a receipt, in a form prescribed under the amended standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining a certificate or permit under subparagraph (A)(i) of this paragraph.

(C) PROHIBITED FEES.—The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

(D) LIMITATION ON PARTICIPATION BY STATES.—Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

(3) EFFECTIVE DATE OF AMEND-MENTS.—Amendments prescribed under this subsection shall take effect by January 1, 1994.

(d) INTERPRETATION AUTHORITY OF COMMIS-SION.—This section does not affect the authority of the Commission to interpret its regulations and certificates and permits issued under section 10922 or 10923 of this title.

APPENDIX H

Mich. Comp. Laws § 478.7 (2001)

Motor carrier engaged in interstate or foreign transportation of property for compensation; registration and vehicle fees; filing record of authority; approval of application for registration of exempt operations; annual fee; reciprocal agreement; disposition of fees.

(1) A motor carrier shall not engage in the interstate or foreign transportation of property for compensation without first having registered with the commission and paid the required registration and vehicle fees.

(2) A motor carrier operating in this state under authority granted by the interstate commerce commission pursuant to section 10922 of subchapter II of chapter 109 of subtitle IV of title 49 of the United States code, 49 U.S.C. 10922, shall file and maintain a record of that authority with the commission. A motor carrier shall not operate within this state without first complying with this subsection.

(3) A motor carrier shall not engage in the interstate transportation of property within this state pursuant to exemptions from economic regulation permitted under the interstate commerce act, under subtitle IV of title 49 of the United States code, 49 U.S.C. 10101 to 11917, without the approval by the commission of an application for the registration of the exempt operations.

(4) The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

(5) Of the fees collected pursuant to this section, not less than 90% of those fees collected in excess of $1,400,000.00 annually shall be deposited in the truck safety fund established in section 25 of Act No. 51 of the Public Acts of 1951, being section 247.675 of the Michigan Compiled Laws.